

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 245

**WATERMAN STEAMSHIP CORPORATION,
PETITIONER,**

UNITED STATES,

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**PETITION FOR CERTIORARI FILED JULY 2, 1964
CERTIORARI GRANTED DECEMBER 7, 1964**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 245

WATERMAN STEAMSHIP CORPORATION,
PETITIONER,

v.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

INDEX

	Original	Print
Record from the United States District Court for the Southern District of Alabama		
Excerpts from complaint	3	1
Exhibit A—Claim for refund of United States income taxes for 1947	24	17
Excerpts from attachment—Statement of Waterman Steamship Corporation	25	18
Exhibit A—List of 18 vessels with “Statu- tory Sales Price,” “Original Purchase Price,” “Revised Tax Basis,” etc.	28	21
Exhibit B—Computation of the amount of the deduction for additional depre- ciation	29	22
Excerpts from answer	30	23
Excerpt from Plaintiff’s Exhibit A—General stipulation of facts, with attachments	46	28
Excerpt from Plaintiff’s Exhibit B—Stipulation of Facts—Section 9 Depreciation Issue	73	40
Exhibit S-3—Final Agreement, dated June 11, 1951, with attachments	87	51

Record from the United States District/Court for the Southern District of Alabama—Continued		
Excerpt from Plaintiff's Exhibit F—Stipulation of Facts—Section 9 Depreciation Issue—Continued		
Plaintiff's Exhibit F-S-4—Letter from Department of Commerce to Waterman Steamship Corporation, dated June 11, 1954	111	74
Plaintiff's Exhibit G—Part 1—Stipulation of Facts—Counterclaims	118	76
Exhibit 24—Contract between United States Maritime Commission and Waterman Steamship Corporation, dated November 2, 1945	120	78
Exhibit 25—Preferred Mortgage, Waterman Steamship Corporation to United States of America on SS Fairport, dated February 27, 1946, with Certificate of Registry attached	130	87
Exhibit 26—Estimated Cost and Valuation Statement, Fairport	161	113
Exhibit 27—Letter from Wade H. Skinner, General Counsel, to U. S. Maritime Commission, dated February 21, 1946	162	115
Exhibit 28—Contract between United States Maritime Commission and Waterman Steamship Corporation, dated August 14, 1944	165	117
Exhibit 29—Preferred Mortgage, Waterman Steamship Corporation to United States of America on SS Hastings, dated November 17, 1944, with Certificate of Registry attached	175	125
Exhibit 30—Letter from Francis B. Goertner, Assistant General Counsel, to U. S. Maritime Commission, dated November 9, 1944	205	150
Exhibit 59—War Shipping Administration, Requisition Bareboat Charter for Dry Cargo and Tank Vessels, Contract No. WSA-8884	207	152
Defendant's Exhibit 1—Certification of Maritime Administration, dated February 21, 1961, re attachments—Office Memorandum from Chief, Division of Accounts to Chief, Division of Claims, dated May 18, 1949, with attachments	218	161

INDEX

iii

Original Print

Record from the United States District Court for the Southern District of Alabama—Continued		
Defendant's Exhibit 2—Certification of Maritime Administration, dated February 24, 1961, re attachment—Office Memorandum from Chief Examiner to U. S. Maritime Commission, dated August 8, 1945	223	166
Excerpts from opinion with findings of fact and conclusions of law, Thomas, J.	247	170
Order for judgment	285	182
Notice of appeal	286	183
Proceedings in the United States Court of Appeals for the Fifth Circuit	296	183
Opinion, Rives, J. (excerpts)	296	183
Opinion, concurring in part and dissenting in part, Cameron, J.	306	187
Judgment	314	192
Petition for rehearing en banc by Waterman Steamship Corporation	316	193
Order denying petition for rehearing	324	199
Clerk's certificate (omitted in printing)	325	199
Order allowing rectorari	326	200

[fol. 3]

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION, Plaintiff,
vs.

UNITED STATES OF AMERICA, Defendant.

COMPLAINT—Filed October 14, 1959

Claim One

1. This action arises under the provisions of Sections 1346 (a) (1) and 1402, of Title 28 of the United States Code.

2. The full name of Plaintiff is Waterman Steamship Corporation. Plaintiff is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business in the City of Mobile, County of Mobile, State of Alabama, within the jurisdiction of this Honorable Court.

3. This claim is to recover from the United States of America an overpayment of Federal income taxes of Four Hundred Eighty Two Thousand Five Hundred Forty Eight and 28/100 (\$482,548.28) Dollars, together with interest thereon as provided by law, representing Federal income taxes and interest erroneously and illegally assessed against and collected from the Plaintiff (\$376,387.63 normal tax and surtax and \$106,160.65 deficiency interest) for Plaintiff's taxable year 1947 ended on December 31, 1947.

4. On or about September 10, 1948, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff [fol. 4] filed its Federal Income Tax Return for the taxable year 1947 with the Collector of Internal Revenue,

Birmingham, Alabama, (now District Director of Internal Revenue). Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$3,343,367.72, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 13, 1948	\$1,020,000.00
June 15, 1948	800,000.00
September 10, 1948	687,525.79
December 14, 1948	835,841.93
Total	\$3,343,367.72

5. Pursuant to the assessment of deficiencies, Plaintiff paid partially to the Collector of Internal Revenue, Birmingham, Alabama, and partially to the District Director of Internal Revenue, Birmingham, Alabama, additional income tax for its taxable year 1947 in the amount of \$1,313,846.72, with interest thereon in the amount of \$287,976.34, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$ 994,900.00	\$ 56,929.28
June 7, 1951	135,726.62	—
November 5, 1954	115,000.00	—
April 13, 1955	—	196,341.29
February 11, 1957	56,104.83	—
April 17, 1957	12,115.27	34,705.77
Total	\$1,313,846.72	\$287,976.34

[fol. 5] 6. (a) Plaintiff is, and was at all times pertinent to the matters herein alleged and complained of, a steamship company engaged in the transportation of goods and cargo in interstate and foreign commerce and in connection with such activity owns and operates a fleet of vessels. At various times during World War II and prior to March 8, 1946, Plaintiff purchased eighteen (18) C-2 type cargo vessels from the United States Maritime Commission for use in its said business.

(b) Plaintiff owned said eighteen (18) vessels during its taxable year 1947 and Plaintiff's costs of said vessels on which it was entitled to compute depreciation allowable for said taxable year under the Internal Revenue Laws of the United States were \$26,816,820.39, as follows:

Original Purchase Price Paid by Plaintiff \$49,582,767.02

Less Net Sales Price Adjustments Effective
as of March 8, 1946, Allowed Plaintiff
Under the Merchant Ship Sales Act of
1946, 60 Stat. 41 (50 App. U.S.C. Sec. 1735
et seq.)

\$22,765,946.63

Total Purchase Price and Basis for

Depreciation \$26,816,820.39

(c) In computing its Federal income taxes for the taxable year 1947, as shown on Plaintiff's Income Tax Return for that year, Plaintiff erroneously computed the depreciation allowable for said taxable year with respect to said eighteen (18) vessels on a basis of only \$17,997,981.84. Plaintiff therefore erroneously failed to deduct depreciation in the amount of \$521,738.30, said sum being the depreciation of said vessels allowable for Plaintiff's taxable [fol. 6] year 1947 on the difference of \$8,818,838.55 between said erroneous basis of \$17,997,981.84 and said correct basis of \$26,816,820.39 as computed in sub-paragraph 6 (b) hereof.

11. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843 a claim for refund of an overpayment of its Federal income taxes for the taxable year 1947 in the amount of \$376,387.63 or such greater amount as may be legally refundable. In said claim for refund Plaintiff claimed refund of corporation income taxes for its taxable year 1947 with respect to a deduction for additional depreciation of C-2 type cargo vessels (Paragraph 6 hereof), a deduction for additional Alabama State income tax liability (Paragraph 7 hereof), the treatment of gain upon the sale

of vessels as long-term capital gain (Paragraph 8, hereof), [fol. 7] the allowance of a depreciation deduction for vessels purchased from the United States Navy (Paragraph 9 hereof), and the allowance of an additional foreign tax credit representing tax imposed by the Republic of the Philippines (Paragraph 10 hereof). A copy of said claim for refund is attached hereto as Exhibit "A", incorporated herein and made a part hereof by reference.

12. Said claim for refund of Federal income taxes for Plaintiff's taxable year 1947 was erroneously denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by registered mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

13. Plaintiff avers that by virtue of the matters herein alleged there has been an overpayment by Plaintiff of its Federal income taxes for the taxable year 1947 in an amount of no less than \$376,387.63, and an overpayment of interest thereon in an amount of no less than \$106,160.65, which amounts have been erroneously and wrongfully assessed against and collected from Plaintiff under the Internal Revenue Laws of the United States.

14. The premises considered, Plaintiff claims of the Defendant the sum of \$482,548.28, together with interest thereon as provided by law, the costs and disbursements of this action, and for such additional sum or further relief as the exigencies of the case may require and as the Court may deem equitable and proper.

Claim Two

15. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 and 2 above.

[fol. 8] 16. This claim is to recover from the United States of America an overpayment of Federal income taxes of Nine Hundred Sixty Three Hundred Thousand Nine Hundred Sixty Five and 87/100 (\$963,965.87) Dollars, together with interest thereon as provided by law, representing Federal income taxes and interest erroneously and

illegally assessed against and collected from the Plaintiff (\$696,522.22 normal tax and surtax and \$267,443.65 deficiency interest) for Plaintiff's taxable year 1948 ended on December 31, 1948.

17. - On or about September 14, 1949, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1948 with the Collector of Internal Revenue, Birmingham, Alabama, (now District Director of Internal Revenue). Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$3,189,492.33, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 12, 1949	\$ 800,000.00
June 14, 1949	800,000.00
September 14, 1949	390,999.25
September 14, 1949	401,120.00
December 14, 1949	797,373.08
Total	\$3,189,492.33

18. Pursuant to the assessment of deficiencies, Plaintiff paid partially to the Collector of Internal Revenue, Birmingham, Alabama, and partially to the District Director [fol. 9] of Internal Revenue, Birmingham, Alabama, additional income tax for its taxable year 1948 in the amount of \$1,141,526.67, with interest thereon in the amount of \$344,195.24, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$ 359,400.00	\$ 46,225.51
June 7, 1951	1,806.06	—
November 5, 1954	478,000.00	—
April 13, 1955	—	154,418.24
February 11, 1957	293,318.04	—
April 17, 1957	9,002.58	143,551.49
Total	\$1,141,526.67	\$344,195.24

19. (a) Plaintiff incorporates herein by reference the allegations of sub-paragraph 6 (a) above.

(b) Plaintiff owned said eighteen (18) vessels during all of its taxable year 1948, except for one of the vessels which it sold on September 28, 1948. Plaintiff's costs of said eighteen (18) vessels owned by it through September 28, 1948, on which it was entitled to compute depreciation allowable for that part of its taxable year 1948 from January 1, 1948, through September 28, 1948, under the Internal Revenue Laws of the United States were \$26,816,820.39, as follows:

Original Purchase Price Paid by Plaintiff	\$49,582,767.02
Less Net Sales Price Adjustments Effective as of March 8, 1946, Allowed Plaintiff [fol. 10] Under the Merchant Ship Sales Act of 1946, 60 Stat. 41 (50 App. U.S.C. Sec. 1735 et seq.)	\$22,765,946.63
Total Purchase Price and Basis for Depreciation	\$26,816,820.39

(c) Plaintiff's costs of said seventeen (17) vessels owned by Plaintiff from September 29, 1948, through December 31, 1948, on which it was entitled to compute depreciation allowable for that part of its taxable year 1948 from September 29, 1948, through December 31, 1948, under the Internal Revenue Laws of the United States were \$25,982,993.16, as follows:

Original Purchase Price Paid by Plaintiff	\$46,591,639.20
Less Net Sales Price Adjustments Effective as of March 8, 1946, Allowed Plaintiff Under the Merchant Ship Sales Act of 1946, 60 Stat. 41 (50 App. U.S.C. Sec. 1735 et seq.)	\$20,608,646.04
Total Purchase Price and Basis for Depreciation	\$25,982,993.16

(d) In computing its Federal income taxes for the taxable year 1948, as shown on Plaintiff's Income Tax Return for that year, Plaintiff erroneously computed the depreciation allowable for that part of said taxable year from January 1, 1948, through September 28, 1948, with respect to said eighteen (18) vessels on a basis of only \$17,997,981.84, and Plaintiff erroneously computed the depreciation allowable for that part of said taxable year from September 29, 1948, through December 31, 1948, with [fol. 11] respect to said seventeen (17) vessels on a basis of only \$17,030,213.84. Plaintiff therefore erroneously failed to deduct depreciation in the amount of \$523,722.64, said sum being the depreciation of said eighteen (18) vessels allowable for that part of said taxable year from January 1, 1948, through September 28, 1948, on the difference of \$8,818,838.55 between said erroneous basis of \$17,997,981.84 and the correct basis of \$26,816,820.39 as computed in sub-paragraph 19 (b) hereof, and the depreciation of said seventeen (17) vessels allowable for that part of said taxable year from September 29, 1948, through December 31, 1948, on the difference of \$8,952,779.32 between said erroneous basis of \$17,030,213.84 and the correct basis of \$25,982,993.16 as computed in sub-paragraph 19 (c) hereof.

24. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal [fol. 12] Revenue, Birmingham, Alabama, on United States Treasury Department Form 843 a claim for refund of an over-payment of its Federal income taxes for the taxable year 1948 in the amount of \$696,522.22 or such greater amount as may be legally refundable. In said claim for refund Plaintiff claimed refund of corporation income taxes for its taxable year 1948 with respect to a deduction for additional depreciation of C-2 type cargo vessels (Paragraph 19 hereof), a deduction for additional Alabama State income tax liability (Paragraph 20 hereof), the treatment of gain upon the sale of vessels as long-term capital gain (Paragraph 21 hereof), the allowance of a depreciation deduction for vessels purchased from the United States Navy (Paragraph 22 hereof), and the allowance of an addi-

tional foreign tax credit representing tax imposed by the Republic of the Philippines (Paragraph 23 hereof). A copy of said claim for refund is attached hereto as Exhibit "B", incorporated herein and made a part hereof by reference.

25. Said claim for refund of Federal income taxes for Plaintiff's taxable year 1948 was erroneously denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by registered mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

26. Plaintiff avers that by virtue of the matters herein alleged there has been an overpayment by Plaintiff of its Federal income taxes for the taxable year 1948 in an amount of no less than \$696,522.22 and an overpayment of interest thereon in an amount of no less than \$267,443.65, which amounts have been erroneously and wrongfully assessed against and collected from Plaintiff under the Internal Revenue Laws of the United States.

[fol. 13] 27. The premises considered, Plaintiff claims of the Defendant the sum of \$963,965.87, together with interest thereon as provided by law, the costs and disbursements of this action, and such additional sums or further relief as the exigencies of the case may require, and as the Court may deem equitable and proper.

Claim Three

28. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 and 2 above.

29. This claim is to recover from the United States of America an overpayment of Federal income taxes of One Million One Hundred Sixteen Hundred Thousand Three Hundred Twenty Three and 28/100 (\$1,116,323.28) Dollars, together with interest thereon as provided by law, representing Federal income taxes and interest erroneously and illegally assessed against and collected from the Plaintiff (\$868,844.06 normal tax and surtax and \$247,479.22 deficiency interest) for Plaintiff's taxable year 1949 ended on December 31, 1949.

30. On or about September 11, 1950, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1949 with the Collector of Internal Revenue, Birmingham, Alabama (now District Director of Internal Revenue). Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due [fol. 14] on said return, viz: \$1,473,667.11, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 14, 1950	\$ 375,000.00
June 15, 1950	375 000.00
September 12, 1950	355,250.33
December 14, 1950	13,786.78
December 14, 1950	354,630.00
Total	\$1,473,667.11

31. Pursuant to the assessment of deficiencies, Plaintiff paid partially to the Collector of Internal Revenue, Birmingham, Alabama, and partially to the District Director of Internal Revenue, Birmingham, Alabama, additional income tax for its taxable year 1949 in the amount of \$924,070.37, with interest thereon in the amount of \$251,562.94, in the amounts and on the dates as follows:

<i>Date of payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$283,300.00	\$ 8,816.02
June 7, 1951	12,047.30	—
November 5, 1954	215,000.00	—
April 15, 1955	—	71,037.73
February 11, 1957	407,203.87	—
April 17, 1957	6,519.20	171,709.19
Total	\$924,070.37	\$251,562.94

32. (a) Plaintiff incorporates herein by reference the allegations of sub-paragraph 6 (a) above.

[fol. 15] (b) Plaintiff owned seventeen (17) of said C-2 vessels during its taxable year 1949 and Plaintiff's costs of

said vessels on which it was entitled to compute depreciation allowable for said taxable year under the Internal Revenue Laws of the United States were \$25,982,993.16, as follows:

Original Purchase Price Paid by Plaintiff....	\$46,591,639.20
Less Net Sales Price Adjustments Effective as of March 8, 1946, Allowed Plaintiff Under the Merchant Ship Sales Act of 1946; 60 Stat. 41 (50 App. U.S.C. Sec. 1735 et seq.)	\$20,608,646.04
Total Purchase Price and Basis for De- preciation	\$25,982,993.16

(c) In computing its Federal income taxes for the taxable year 1949, as shown on Plaintiff's Income Tax Return for that year, Plaintiff erroneously computed the depreciation allowable for said taxable year with respect to said seventeen vessels on a basis of only \$17,030,213.84. Plaintiff therefore erroneously failed to deduct depreciation in the amount of \$529,443.45; said sum being the depreciation of said vessels allowable for Plaintiff's taxable year 1949 on the difference of \$8,952,779.32 between said erroneous basis of \$17,030,213.84 and the correct basis of \$25,982,993.16 as computed in sub-paragraph 32 (b) hereof.

[fol. 16] 37. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843 a claim for refund for an overpayment of its Federal income taxes for the taxable year 1949 in the amount of \$868,844.06 or such greater amount as may be legally refundable. In said claim for refund, Plaintiff claimed refund of corporation income taxes for its taxable year 1949 with respect to a deduction for additional depreciation of C-2 type cargo vessels (Paragraph 32 hereof), a deduction for additional Alabama State income tax liability (Paragraph 33 hereof), the allowance of an additional foreign tax credit representing a tax imposed by the Republic of the Philippines (Paragraph 34

hereof), the allowance of a deduction for a bad debt (Paragraph 35 hereof), and the allowance of a capital loss for worthlessness of stock (Paragraph 36 hereof). A copy of said claim for refund is attached hereto as Exhibit "C", incorporated herein and made a part hereof by reference.

38. Said claim for refund of Federal income taxes for Plaintiff's taxable year 1949 was erroneously denied by the [fol. 17] Commissioner of Internal Revenue in a notice mailed to Plaintiff by registered mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

39. Plaintiff avers that by virtue of the matters herein alleged there has been an overpayment by Plaintiff of its Federal income taxes for the taxable year 1949 in an amount of no less than \$868,844.06 and an overpayment of interest thereon in an amount of no less than \$247,479.22, which amounts have been erroneously and wrongfully assessed against and collected from Plaintiff under the Internal Revenue Laws of the United States.

40. The premises considered, Plaintiff claims of the Defendant the sum of \$1,116,323.28, together with interest thereon as provided by law, the costs and disbursements of this action, and such additional sum or further relief as the exigencies of the case may require, and as the Court may deem equitable and proper.

Claim Four

41. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 and 2 above.

42. This claim is to recover from the United States of America an overpayment of Federal income taxes of Two Hundred Forty Eight Hundred Thousand Nine Hundred Thirty Five Hundred and 86/100 (\$248,935.86) Dollars, together with interest thereon as provided by law, representing Federal income taxes and interest erroneously and illegally assessed against and collected from the Plaintiff (\$236,801.68 normal tax and surtax and \$12,134.18 deficiency [fol. 18] interest) for Plaintiff's taxable year 1950 ended on December 31, 1950.

43. On or about September 13, 1951, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1950 with the Collector of Internal Revenue, Birmingham, Alabama (now District Director of Internal Revenue). Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$631,707.19, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 13, 1951	\$ 6,510.00
March 13, 1951	203,490.00
June 14, 1951	210,000.00
September 13, 1951	85,365.75
December 13, 1951	126,341.44
Total	\$631,707.19

44. Pursuant to the assessment of deficiencies, Plaintiff paid to the District Director of Internal Revenue, Birmingham, Alabama, additional income tax for its taxable year 1950 in the amount of \$173,829.97, with interest thereon in the amount of \$12,482.42, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
May 26, 1952	\$164,312.39	\$12,482.42
May 26, 1952	9,517.58	—
Total	\$173,829.97	\$12,482.42

[fol. 19] 45. Subsequent to the filing of Plaintiff's Federal Income Tax Return for the taxable year 1950, the Re-negotiation Board determined certain excessive profits of Plaintiff which were refundable to said Board. As a result of said determination, the Commissioner of Internal Revenue, upon examination of said Tax Return, allowed Plaintiff a credit of \$27,762.00 against its Federal income taxes for the taxable year 1950.

46. The Commissioner of Internal Revenue, upon examination of Plaintiff's Income Tax Return for the taxable

year 1950, determined for said taxable year a net over-assessment against Plaintiff of income taxes in the amount of \$4,849.50 and a net overassessment against Plaintiff of interest in the amount of \$348.24, and allowed said net overassessments, together with interest thereon of \$1,509.91, as a credit against Plaintiff's Federal income taxes for the taxable year 1947.

47. (a) Plaintiff incorporates herein by reference the allegations of sub-paragraph 6 (a) above.

(b) Plaintiff owned seventeen (17) of said C-2 vessels during its taxable year 1950 and Plaintiff's costs of said vessels on which it was entitled to compute depreciation allowable for said taxable year under the Internal Revenue Laws of the United States were \$25,982,993.16, as follows:

Original Purchase Price Paid by Plaintiff....	\$46,591,639.20
Less Net Sales Price Adjustments Effective as of March 8, 1946, Allowed Plaintiff Under the Merchant Ship Sales Act of 1946, 60 Stat. 41 (50 App. U.S.C. Sec. 1735 et seq.)	\$20,608,646.04
Total Purchase Price and Basis for De- preciation	\$25,982,993.16

[fol. 20] (c) In computing its Federal income taxes for the taxable year 1950, as shown on Plaintiff's Income Tax Return for that year, Plaintiff erroneously computed the depreciation allowable for said taxable year with respect to said seventeen vessels on a basis of only \$17,030,213.84. Plaintiff therefore erroneously failed to deduct depreciation in the amount of \$529,443.45, said sum being the depreciation of said vessels allowable for Plaintiff's taxable year 1950 on the difference of \$8,952,779.32 between said erroneous basis of \$17,030,213.84 and the correct basis of \$25,982,993.16 as computed in sub-paragraph 47 (b) hereof.

50. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury

Department Form 843 a claim for refund of an over-payment of its Federal income taxes for the taxable year 1950 [fol. 21] in the amount of \$236,801.68 or such greater amount as may be legally refundable. In said claim for refund, Plaintiff claimed refund of corporation income taxes for its taxable year 1950 with respect to a deduction for additional depreciation of C-2 type cargo vessels (Paragraph 47 hereof), a deduction for additional Alabama State income tax liability (Paragraph 48 hereof), and the allowance of an additional foreign tax credit representing a tax imposed by the Republic of the Philippines (Paragraph 49 hereof). A copy of said claim for refund is attached hereto as Exhibit "D", incorporated herein and made a part hereof by reference.

51. Said claim for refund of Federal income taxes for Plaintiff's taxable year 1950 was erroneously denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by registered mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

52. Plaintiff avers that by virtue of the matters herein alleged that there has been an overpayment by Plaintiff of its Federal income taxes for the taxable year 1950 in an amount of no less than \$236,801.68 and an overpayment of interest thereon in an amount of no less than \$12,134.18, which amounts have been erroneously and wrongfully assessed against and collected from Plaintiff under the Internal Revenue Laws of the United States.

53. The premises considered, Plaintiff claims of the Defendant the sum of \$248,935.86, together with interest thereon as provided by law, the costs and disbursements of this action, and such additional sum or further relief as the exigencies of the case may require, and as the Court may deem equitable and proper.

[fol. 22] WHEREFORE, the premises considered, Plaintiff prays this Court for a judgment against the Defendant upon the facts and law of, to-wit, \$2,811,773.29, with interest thereon as provided by law, the costs and disbursements of this action and such additional sum or further relief as the

exigencies of the case may require and as the Court may deem proper and equitable.

William H. Armbrecht, John W. McConnell, Jr.,
George A. McCain, Jr., Attorneys for Plaintiff.

Of Counsel: Armbrecht, Jackson, McConnell & DeMouy,
1101 Merchants National Bank Building, Mobile, Alabama.

Certificate of Service (omitted in printing).


[fol. 23]

[File endorsement omitted]

16

[fol. 24]

EXHIBIT A TO COMPLAINT

(See opposite) 

No. 843 (REV. 5-55)	U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE <h2 style="margin: 0;">CLAIM</h2> TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID	District Director's Stamp (Date received) <div style="border: 2px solid black; border-radius: 50%; padding: 10px; text-align: center;"> RECEIVED 1957 OFFICE OF CHIEF, AUDIT DIVISION BIRMINGHAM, ALA. </div>
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The District Director will indicate in the block below the kind of claim filed, and fill in, where required.

☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps WATKIN STEAMSHIP CORPORATION			
Number and street of E. Joseph Street		City, town, postal zone, State Mobile 13, Alabama	
1. District in which return (if any) was filed Birmingham, Alabama		2. Name and address shown on return, if different from above	
3. Period - If for tax reported on annual basis, prepare separate form for each taxable year From January 1, 1947 To October 31, 1947		4. Kind of tax Income Tax	
5. Amount of assessment \$4,557,214.44		Date of payment as schedule below	
6. Date claims were purchased from the Government		7. Amount to be refunded \$ 376,307.63	
8. Amount to be abated (not applicable to income, estate, or gift taxes)		9. The claimant believes that this claim should be allowed for the following reasons:	

Schedule of Payments:
dates of payment -

3/13/40
 5/15/40
 9/10/40
 12/14/40
 5/ 7/51
 5/ 7/51
 11/ 5/54
 2/11/57
 4/17/57

Amount
 \$1,621,000.00
 600,000.00
 807,525.79
 835,541.93
 994,900.00
 135,725.02
 115,000.00
 50,104.00
 12,115.27

\$4,657,214.44

Attach letter size sheets if space is not sufficient.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed **WATKIN STEAMSHIP CORPORATION**
 Dated **September 23, 1957** by **E. A. Hirs** **Treasurer**

INSTRUCTIONS

1. The claim must set forth in detail each ground upon which it is made and facts sufficient to apprise the Commissioner of the exact basis thereof.
2. If a joint income tax return was filed for the year for which this claim is filed, both husband and wife must sign this claim even though only one had income.
3. Whenever it is necessary to have the claim executed by an agent on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent to sign the claim on behalf of the taxpayer shall accompany the claim.
4. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration,

or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

5. Where the taxpayer is a corporation, the claim will be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

WATERMAN STEAMSHIP CORPORATION

61 St. Joseph Street

Mobile 13, Alabama

STATEMENT ATTACHED TO AND MADE PART OF
CLAIM FOR REFUND OF U.S. INCOME TAXES
(FORM 843) FOR THE CALENDAR YEAR ENDED
DECEMBER 31, 1947

The within claim for refund of income taxes in the amount of \$376,387.63 or such greater amount as may be legally refundable, is based upon the following grounds:

(a) Taxpayer is entitled to, and claims, a deduction for additional depreciation in the amount of \$521,738.30 in excess of that allowed in the Revenue Agent's Report dated February 9, 1955 transmitted to taxpayer under date of March 24, 1955 and Supplemental Revenue Agent's Report dated December 5, 1955 transmitted to taxpayer December 14, 1955. This is due to the fact that on eighteen (18) C-2 type dry cargo vessels which taxpayer purchased from the U.S. Maritime Commission at high prices during and shortly after the War, taxpayer was granted, as of March 8, 1946, an adjustment in the Original Purchase Price pursuant to Section 9 of the Merchant Ship Sales Act of 1946.

Such Act was passed to provide for the orderly disposition and sale of surplus merchant vessels built by the Government during World War II. After passage of the Act on March 8, 1946, qualified purchasers could obtain such surplus vessels at the so-called "Statutory Sales Price" which was defined therein as a certain percentage of "pre-war domestic cost" with varying adjustments for age, condition, etc. The Statutory Sales Price established thereunder was substantially lower than the price paid for a [fol. 26] similar vessel which had been purchased prior to the effective date of the Act. In order to avoid prejudice to such prior purchasers, Sec. 9 of the Act provided that upon proper application and subject to certain conditions,

they could receive an adjustment in the Original Purchase Price of their vessels.


In its tax return as originally filed, and in the Revenue Agent's Reports referred to above, the so-called Statutory Sales Price was erroneously used as the basis for depreciation of the eighteen vessels referred to above. The correct basis which should have been used in computing depreciation is the Original Purchase Price less the net amount of adjustments obtained by taxpayer pursuant to the formula specified in Section 9(b) of said Act (including Sec. 9(c) (1) to which said subsection refers).

Whereas a new purchaser buying a vessel after March 8, 1946 paid the Statutory Sales Price, this was not the situation in the case of a prior purchaser. In the latter instance such price was only referred to in Sec. 9 as one element in the formula under subsection (b) determining the adjustment of the Original Purchase Price granted to owners who acquired vessels at high prices during the War and prior to the passage of said Act.

There are set forth in *Exhibit A* attached, the names of the 18 vessels, and in the case of each vessel the "Statutory Sales Price", the "Original Purchase Price", and the "Revised Tax Basis" namely, the Cost ("Original Purchase Price") less the net adjustments pursuant to Sec. 9 of the M.S.S. Act. *Exhibit B* attached shows the computation of the amount of the deduction for additional depreciation claimed herein.

[fol. 27] Giving effect to the above changes results in an over-assessment of income tax in the amount referred to above which is hereby claimed as refundable to taxpayer.

EXHIBIT A TO STATEMENT

✓ (See opposite) 

WATERMAN STEAMSHIP CORPORATION

EXHIBIT ATTACHED TO CLAIM FOR REFUND (FORM 843)

Vessel	Statutory Sales Price	Original Purchase Price	Net Adjustments Under Sec. 9	Revised Tax Basis	Increase (Decrease) in Tax Basis
Afoundria	\$ 967,768.00	\$ 2,696,763.77	\$ 1,884,564.34	\$ 814,199.43	\$ (153,568.57)
Andrew Jackson	1,005,380.00	2,691,194.97	1,538,362.43	1,152,832.54	1,474,452.54
Azales City	978,268.00	3,001,657.44	614,922.27	2,386,735.17	1,408,467.17
Blenville	967,768.00	3,000,000.00	538,792.87	2,461,207.13	1,493,438.13
City of Alma	1,012,080.68	2,626,493.54	1,488,208.81	1,138,284.73	126,208.05
Fairisle	983,728.00	3,023,805.28	125,260.13	2,898,545.15	1,914,817.15
Fairland	983,728.00	3,036,211.74	174,907.07	2,861,304.67	1,877,576.67
Fairport	1,075,672.19	2,450,070.78	1,373,153.34	1,076,917.44	1,243.25
Hastings	983,727.99	2,642,706.03	1,494,054.73	1,148,651.30	163,373.31
Jean LaFitte	967,768.00	2,806,924.50	2,020,932.88	787,961.62	(179,806.38)
John B. Waterman	1,077,000.00	2,788,336.61	1,711,336.61	1,077,000.00	
Kyska	1,047,147.19	2,442,739.51	1,321,116.09	1,121,623.42	74,476.23
Madaket	995,328.99	2,641,046.21	1,514,765.54	1,126,280.67	130,951.68
Malden Creek	1,035,439.05	2,419,158.53	1,314,731.93	1,104,426.60	48,967.55
Michael S. Mearns	983,728.00	3,045,258.66	249,906.06	2,795,352.60	1,811,624.60
Macosta	937,768.00	2,660,169.32	1,783,108.93	877,060.39	(90,707.91)
Warrior	937,768.00	2,991,127.82	2,157,300.59	833,827.23	(133,940.77)
Yata	926,343.25	2,615,102.31	1,450,492.01	1,154,910.30	178,266.55
	<u>\$17,997,961.64</u>	<u>\$69,582,767.02</u>	<u>\$22,765,946.63</u>	<u>\$26,816,820.39</u>	<u>\$8,418,838.55</u>

NOTE: The U.S.M.C. refused to accept applications for, or grant adjustments, on a separate vessel basis, but required owners who purchased vessels prior to March 6, 1946 to apply for and accept or refuse the Sec. 9 adjustments to Original Purchase Price on the basis of all vessels purchased from the Government prior to said date. This accounts for a "Negative" net adjustment in the case of 4 vessels which result in a Revised Tax Basis less than the Statutory Sales Price.

[fol. 29]

EXHIBIT B TO STATEMENT

WATERMAN STEAMSHIP CORPORATION

EXHIBIT ATTACHED TO CLAIM FOR REFUND - (FORM 443)

Vessel	Increase (Decrease) in Tax Basis (1)	Remaining Life in Years After 3/8/46 (2)	Additional (Reduced) Depreciation Per Day	(3) Additional (Reduced) Depreciation		
				1947	1948	1949
Atoundria	\$ (153,568.52)	6,454	\$(23.79)	\$ (8,683.35)	\$ (8,683.35)	\$ (8,683.35)
Andrew Jackson	157,452.54	6,951	21.21	7,741.65	7,741.65	7,741.65
Azalea City	1,408,467.17	6,322	222.79	81,318.35	81,318.35	81,318.35
Blenville	1,493,439.13	6,290	237.43	86,661.95	86,661.95	86,661.95
City of Alua	156,204.05	6,993	18.05	6,588.25	6,588.25	6,588.25
Fairisle	1,945,817.15	5,986	319.88	116,756.20	116,756.20	116,756.20
Fairland	1,877,576.67	7,017	312.05	113,898.25	113,898.25	113,898.25
Fairport	1,245.25	7,292	1.17	62.05	62.05	62.05
Hastings	163,373.31	6,819	23.96	8,745.40	8,745.40	8,745.40
Jean Lafitte	(179,806.38)	6,392	(28.13)	(10,267.45)	(10,267.45)	(10,267.45)
John B. Waterman		7,300				
Kyska	74,476.23	7,181	10.37	3,785.05	3,785.05	3,785.05
Madaket	130,951.68	6,887	19.01	6,938.65	6,938.65	6,938.65
Malden Creek	48,967.55	7,238	6.77	2,471.05	2,471.05	2,471.05
Raphael Semmes	1,811,624.60	6,076	298.16	108,828.40	108,828.40	108,828.40
Wacosta	(90,707.61)	6,600	(13.74)	(5,015.10)	(5,015.10)	(5,015.10)
Warrior	(135,940.77)	6,346	(21.11)	(7,705.15)	(5,720.81)(4)	9,614.10
Yaka	178,266.55	6,769	26.34	9,614.10	9,614.10	9,614.10
	\$8,818,838.55			\$521,738.30	\$523,722.64	\$529,443.85
						\$539,443.45

- (1) See Exhibit A.
 (2) See Exhibit W of the R.A.R. dated 2/9/55.
 (3) On basis of 365 day year.
 (4) Sold 9/28/48 - reduced depreciation for 271 days in 1948.

[fol. 30] NOTE RE EXHIBITS B, C AND D

EXHIBITS B, C AND D ARE SIMILAR IN ALL RELEVANT RESPECTS TO EXHIBIT A, AND ARE, THEREFORE, OMITTED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

ANSWER—Filed February 9, 1960

Comes now the defendant, United States of America, by its attorney of record, Ralph Kennamer, United States Attorney in and for the Southern District of Alabama, and for its answer to plaintiff's complaint states:

Claim One

1. Admits the allegations contained in paragraph 1.
2. Admits the allegations contained in paragraph 2.
3. Denies the allegations contained in paragraph 3.
4. Admits the allegations contained in paragraph 4, except that the income tax return was filed on September 13, 1948, and that the dates of payment were March 15, June 15, September 13, and December 15, 1948.
5. Denies the allegations contained in paragraph 5 but admits that \$115,000 was paid on March 28, 1955; \$196,341.29 was paid on April 25, 1955; that advance payment (9D) was transferred from a 1952 account in the amount of \$1,187,555.90 on June 7, 1951; that an advance payment of \$56,104.83 was made February 12, 1957; that on March 27, 1957, there was credited from 1950 income tax \$6,707.65 and that on April 18, 1957, \$41,971.54 was paid.

[fol. 31] 6. (a) Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6(a).

(b) Denies the allegations contained in paragraph 6(b).

(c) Denies the allegations contained in paragraph 6(c).

11. Admits the allegations contained in paragraph 11, except denies the allegation contained in the claim for refund and in support thereof not specifically admitted herein.

12. Admits the allegations contained in paragraph 12, except it is denied that the claim for refund was erroneously denied.

13. Denies the allegations contained in paragraph 13.

14. The allegations contained in paragraph 14 require no answer.

Claim Two

15. Defendant adopts the allegations contained in paragraphs 1 and 2 of this answer.

[fol. 32] 16. Denies the allegations contained in paragraph 16.

17. Admits the allegations contained in paragraph 17, except that the dates of payment were March 15, 1949, September 15, 1949, and June 15, 1949.

18. Admits the allegations contained in paragraph 18, except that it alleges that there were two deficiencies assessed for the year 1948; one on March 31, 1955, and the other on March 29, 1957, and except that the payments were made as follows: An advance payment of \$407,431.56 on June 7, 1951; a payment of \$478,000 on March 28, 1955; and a payment of \$154,418.24 on April 25, 1955; an advance payment of \$390,539.13 on February 12, 1957, and a payment of \$194,893.13 on April 18, 1957.

19. (a) Defendant adopts the allegations contained in paragraph 6(a) of this answer.

(b) Denies the allegations contained in paragraph 19(b).

(c) Denies the allegations contained in paragraph 19(c).

(d) Denies the allegations contained in paragraph 19(d).

[fol. 33] 24. Admits the allegations contained in paragraph 24, except denies the allegations contained in the claim for refund and in support thereof which are not specifically admitted in this answer.

25. Admits the allegations contained in paragraph 25, except that it is denied that the claim for refund was erroneously denied.

26. Denies the allegations contained in paragraph 26.

27. The allegations contained in paragraph 27 require no answer.

Claim Three

28. Defendant adopts the allegations of paragraphs 1 and 2 of this answer.

29. Denies the allegations contained in paragraph 29.

30. Admits the allegations contained in paragraph 30, except that the dates of payment were March 15, June 15, September 13, and December 15, 1950.

31. Admits the allegations contained in paragraph 31, except that the payments and dates of payment were as follows: An advance payment of \$304,163.32 on June 7, 1951; a payment of \$215,000 on March 28, 1955; and a payment of \$71,037.73 on April 25, 1955; an advance payment of \$390,539.13 on February 12, 1957; and a payment of \$194,893.13 on April 18, 1957.

[fol. 34] 32. (a) Defendant adopts the allegations contained in paragraph 6(a) of this answer.

(b) Denies the allegations contained in paragraph 32(b).

(c) Denies the allegations contained in paragraph 32(c).

37. Admits the allegations contained in paragraph 37, except defendant denies the allegations contained in the claim for refund and in support thereof which are not specifically admitted in this answer.

38. Admits the allegations contained in paragraph 38, except it is denied that the claim for refund was erroneously denied.

39. Denies the allegations contained in paragraph 39.

40. The allegations contained in paragraph 40 require no answer.

Claim Four

41. Defendant adopts the allegations contained in paragraphs 1 and 2 of this answer.

42. Denies the allegations contained in paragraph 42.

[fol. 35] 43. Admits the allegations contained in paragraph 43, except that the dates and payments were as follows: A payment of \$210,000 on March 15, 1951; a payment of \$210,000 on June 15, 1951; a payment of \$85,365.75 on September 19, 1951; and a payment of \$126,341.44 on December 14, 1951.

44. Admits the allegations contained in paragraph 44, except that the amount was paid by the transfer of an advance payment made on May 26, 1952.

45. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in paragraph 45.

46. Admits the allegations contained in paragraph 46, except defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that the amount was allowed as a credit against plaintiff's federal income taxes for the taxable year 1947.

47. (a) Defendant adopts the allegations contained in paragraph 6(a) of this answer.

(b) Denies the allegations contained in paragraph 47(b).

(c) Denies the allegations contained in paragraph 47(c).

[fol. 36]. 50. Admits the allegations contained in paragraph 50, except defendant denies the allegations contained in the claim for refund and in support thereof which are not specifically admitted in this answer.

51. Admits the allegations contained in paragraph 51, except it is denied that the claim for refund was erroneously denied.

52. Denies the allegations contained in paragraph 52.

53. Defendant denies that plaintiff is entitled to any amount or any relief.

WHEREFORE, defendant prays that plaintiff's actions be dismissed at its cost.

RALPH KENNAMER
United States Attorney.

[File endorsement omitted]

Certificate of Service (omitted in printing).

[fol. 46]

PLAINTIFF'S EXHIBIT A

2-27-61 R.G.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION
Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

GENERAL STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto that the facts set forth on the attachment [fol. 47] hereto may be taken as true and correct and may be found by the Court, without prejudice however to the right of either party to introduce other and further proof not inconsistent with the facts herein stipulated and subject to the right of either party to object to the relevancy and materiality of any fact hereby stipulated to.

GEORGE A. McCAIN, JR.
As Attorney for Plaintiff

RALPH KENNAMER
As Attorney for Defendant

THEODORE D. PEYSER, JR.

GENERAL STIPULATION OF FACTS

1. This action arises under the provisions of Sections 1346(a)(1) and 1402, of Title 28 of the United States Code.

2. Plaintiff is a corporation organized and existing under the laws of the State of Alabama and having its principal office in the City of Mobile, State of Alabama.

3. On September 13, 1948, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1947 with the Collector of Internal Revenue, Birmingham, Alabama, (now District Director of Internal Revenue). Pursuant to the law for payment of taxes in installments, Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$3,343,367.72, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 15, 1948	\$1,020,000.00
June 15, 1948	800,000.00
September 13, 1948	687,525.79
December 15, 1948	835,841.93
TOTAL	\$3,343,367.72

4. Upon examination and audit of Plaintiff's Federal Income Tax Return for 1947, the Commissioner of Internal Revenue determined a deficiency in income tax for said year in the amount of \$1,313,846.72, plus interest thereon in the amount of \$289,834.49. The payments made by Plaintiff (partially to the Collector of Internal Revenue, Birmingham, Alabama; and partially to the District Director of Internal Revenue, Birmingham, Alabama) with respect to said deficiency were as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$ 994,900.00	\$ 56,929.28
June 7, 1951	135,726.62	—
November 5, 1954	115,000.00	—
April 14, 1955	—	196,341.29
February 12, 1957	56,104.83	—
March 27, 1957	4,849.50	1,858.15
April 18, 1957	7,265.77	34,705.77
TOTAL	\$1,313,846.72	\$289,834.49

[fol. 49] The amount of tax paid of \$4,849.50 and the amount of interest paid of \$1,858.15 opposite the date of payment of March 27, 1957, in the above schedule were paid by a credit on said date of a net overassessment in Plaintiff's Federal income taxes in the amount of \$4,849.50 and a net overassessment of interest in the amount of \$348.24 for the year 1950, together with interest thereon in the amount of \$1,509.91.

5. On September 14, 1949, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1948 with the Collector of Internal Revenue, Birmingham, Alabama, (now District Director of Internal Revenue). Pursuant to the law for payment of taxes in installments, Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$3,189,492.33, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 15, 1949	\$ 800,000.00
June 15, 1949	800,000.00
September 15, 1949	390,999.25
September 15, 1949	401,120.00
December 15, 1949	797,373.08
TOTAL	\$3,189,492.33

6. Upon examination and audit of Plaintiff's Federal Income Tax Return for 1948, the Commissioner of Internal Revenue determined a deficiency in income tax for said year in the amount of \$1,141,526.67, plus interest thereon in the amount of \$344,195.24. The payments made by Plaintiff (partially to the Collector of Internal Revenue, Birmingham, and partially to the District Director of Internal Revenue, Birmingham, Alabama) with respect to said deficiency were as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$ 359,400.00	\$ 46,225.51
June 7, 1951	1,806.05	—
November 5, 1954	478,000.00	—
April 14, 1955	—	154,418.24
February 12, 1957	293,318.04	—
April 18, 1957	9,002.58	143,551.49
TOTAL	\$1,141,526.67	\$344,195.24

7. On September 11, 1950, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1949 with the Collector of Internal Revenue, Birmingham, Alabama (now District Director of Internal Revenue). Pursuant to the law for payment of taxes in installments, Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$1,473,667.11, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 15, 1950	\$ 375,000.00
June 15, 1950	375,000.00
September 13, 1950	355,250.33
December 15, 1950	13,786.78
December 15, 1950	354,630.00
TOTAL	\$1,473,667.11

[fol. 51] 8. Upon examination and audit of Plaintiff's Federal Income Tax Return for 1949, the Commissioner of Internal Revenue determined a deficiency in income tax for said year in the amount of \$924,070.37, plus interest thereon in the amount of \$251,562.94. The payments made by Plaintiff (partially to the Collector of Internal Revenue, Birmingham, Alabama, and partially to the District Director of Internal Revenue, Birmingham, Alabama) with respect to said deficiency were as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$283,300.00	\$ 8,816.02
June 7, 1951	12,047.30	—
November 5, 1954	215,000.00	—
April 14, 1955	—	71,037.73
February 12, 1957	407,203.87	—
April 18, 1957	6,519.20	171,709.19
TOTAL	\$924,070.37	\$251,562.94

9. On September 13, 1951, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1950 with the Collector of Internal Revenue, Birmingham, Alabama (now District Director of Internal Revenue). Pursuant to the law for payment of taxes in installments, Plaintiff paid to the Collector of Internal Revenue, Birmingham, [fol. 52] Alabama, the full amount of tax shown to be due on said return, viz: \$631,707.19, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 15, 1951	\$ 6,510.00
March 15, 1951	203,490.00
June 15, 1951	210,000.00
September 19, 1951	85,365.75
December 14, 1951	126,341.44
TOTAL	\$631,707.19

10. Upon examination and audit of Plaintiff's Federal Income Tax Return for 1950, the Commissioner of Internal Revenue determined a deficiency in income tax for said year in the amount of \$173,829.97, plus interest thereon in the amount of \$12,482.42. The payments made by Plaintiff (to the District Director of Internal Revenue) with respect to said deficiency were as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
May 26, 1952	\$164,312.39	\$12,482.42
May 26, 1952	9,517.58	—
TOTAL	\$173,829.97	\$12,482.42

11. Subsequent to the filing of Plaintiff's Federal Income Tax Return for the taxable year 1950, the Renegotiation Board determined certain excessive profits of Plaintiff which were refundable to said Board. As a result of said determination, the Commissioner of Internal Revenue, upon examination of said return, allowed Plaintiff a credit of \$27,762.00 on June 11, 1954, against its Federal income taxes for the year 1950.

[fol. 53] 12. The Commissioner of Internal Revenue, upon examination of Plaintiff's income tax return for the taxable year 1950, determined for said taxable year a net overassessment against Plaintiff of income taxes in the amount of \$4,849.50, and a net overassessment against Plaintiff of interest in the amount of \$348.24, and allowed said net overassessment, together with interest thereon of \$1,509.91, as a credit against Plaintiff's Federal Income Taxes for the taxable year 1947.

13. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843, a claim for refund of an overpayment of its Federal income taxes for the taxable year 1947 in the amount of \$376,387.63 or such greater amount as may be legally refundable. The copy of the refund claim attached to the complaint as Exhibit "A" is a true and correct copy of said refund claim and said copy is made

Exhibit S-4 hereto by reference. Said claim for refund was denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by Registered Mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

14. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843, a claim for refund of an overpayment of its Federal income taxes for the taxable year 1948 in the amount of \$696,522.22 or such greater amount as may be legally refundable. The copy of the refund claim attached to the complaint as Exhibit "B" is a true and correct copy of said refund claim and said copy is made Exhibit S-5 hereto by reference. Said refund claim was [fol. 54] denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by Registered Mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.


15. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843, a claim for refund for an overpayment of its Federal income taxes for the taxable year 1949 in the amount of \$868,844.06 or such greater amount as may be legally refundable. The copy of the refund claim attached to the complaint as Exhibit "C" is a true and correct copy of said refund claim and said copy is made Exhibit S-6 hereto by reference. Said claim for refund was denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by Registered Mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

16. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843, a claim for refund of an overpayment of its Federal income taxes for the taxable year 1950 in the amount of \$236,801.68 or such greater amount

as may be legally refundable. The copy of the refund claim attached to the complaint as Exhibit "D" is a true and correct copy of said refund claim and said copy is made Exhibit S-7 hereto by reference. Said refund claim was denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by Registered Mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

17. True and correct copies of the Federal Income Tax Returns filed by Plaintiff for the years 1947, 1948, 1949 and [fol. 55] 1950 are attached hereto as Exhibits S-8, S-9, S-10 and S-11, respectively.

18. As a result of the examination and audit by the Commissioner of Internal Revenue of Plaintiff's Federal Income Tax Returns filed for the years 1947, 1948, 1949 and 1950, two written reports dated February 9, 1955, and December 5, 1955, respectively, were made by a Revenue Agent or Revenue Agents of the Internal Revenue Service proposing deficiencies in Plaintiff's Federal income taxes for those years. True and correct copies of said reports are attached hereto as Exhibits S-12 and S-13, respectively.

(See opposite) 

Waterman Steamship Corporation
Mobile, Alabama

(Date Received) 2/2

**WAIVER OF RESTRICTIONS ON ASSESSMENT AND
COLLECTION OF DEFICIENCY IN TAX
AND
ACCEPTANCE OF OVERASSESSMENT**

Pursuant to section 272 (d) of the Internal Revenue Code or corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code or corresponding provisions of prior internal revenue laws are hereby waived and consent is given to the assessment and collection of the following deficiencies, together with interest on the tax as provided by law; and the following overassessments are accepted as correct:

DEFICIENCIES

TYPE OF TAX	YEAR ENDED	TAX	PENALTY	TOTAL
Income	Dec. 31, 1947	1,245,626.62		1,245,626.62
Income	Dec. 31, 1948	839,206.05		839,206.05
Income	Dec. 31, 1949	510,347.30		510,347.30
Income	Dec. 31, 1950	173,820.97		173,820.97

OVERASSESSMENTS

TYPE OF TAX	YEAR ENDED	TAX	PENALTY	TOTAL

WATERMAN STEAMSHIP CORPORATION

(Taxpayer)

(Taxpayer)

(Taxpayer)

(SEAL)

By Vice President & Treasurer,

2/2/1955


(Date)

NOTE.—The execution and filing of this form at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a deficiency or a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this form must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

Where the taxpayer is a corporation, the form shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

[fol. 57]

(See opposite) 

FORM 1907
APR 1954

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

PRELIMINARY STATEMENT

NAME OF TAXPAYER

EXAMINING OFFICER

DATE OF REPORT

Waterman Steamship Corporation

Leo. J. Olan and Brett Cameron

2/5/55

SUMMARY OF PROPOSED ADJUSTMENTS

YEAR ENDED (OR PERIOD)	INCOME TAX		OTHER TAX (Specify) (DEF. OR C/A)	PENALTIES - INCREASE OR (DECREASE)	PARTNERSHIP OR FIDUCIARY INCOME INCREASE OR (DECREASE)
	DEFICIENCY	OVERASSESSMENT			
12/31/47	\$1,245,626.62	\$	\$	\$	\$
12/31/48	339,206.05				
12/31/49	510,247.30				
12/31/50	173,289.97				
TOTALS	\$2,769,199.94	\$	\$	\$	\$
NET DEFICIENCY (Overassessment)					
\$ 2,769,199.94		AGREEMENT SECURED	NAME OF PERSON WITH WHOM FINDINGS DISCUSSED		
		Yes	J. W. Brien Fred Schutte		

PRINCIPAL CAUSES OF CHANGES, AND OTHER INFORMATION

The principal causes of a proposed deficiency are the disallowance of amortization, change of depreciation, and other sundry items.

Changes proposed by this report were discussed with Mr. J. W. Brien, Assistant Controller, and Mr. Fred Schutte, C. A., who agreed. An informal conference was held by which an agreement was secured.

The taxpayer corporation was incorporated under the laws of the State of Alabama, June 10, 1919. On January 1, 1947, the corporation purchased 6,000 shares of its no-par common stock at \$63.00, \$378,000.00. On June 14, 1947, it purchased 2,000 shares of \$63.00 which it resold at the same price on December 2, 1947. On April 4, 1950, it purchased 46 shares at \$72.00, \$3,312.00. On December 31, 1943, it declared a stock dividend of 20,146 shares of no-par stock. The market value of this stock was .69.00 per share; therefore, .250, or \$50,425.00 was credited to Common Stock outstanding and the remainder \$1,42,397.00 was credited to Capital Surplus. These were the only capital changes during the years under examination.

SCHEDULES AND/OR EXHIBITS ATTACHED

See attached sheets

[fol. 73]

PLAINTIFF'S EXHIBIT F

2-8-61

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION
Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

*STIPULATION OF FACTS—
SECTION 9 DEPRECIATION ISSUE*

It is hereby stipulated and agreed by and between the parties hereto that for purposes of the Section 9 depreciation issue involved in this cause the facts set forth on the attachment hereto may be taken as true and correct and may be found by the Court, without prejudice however to the right of either party to introduce other and further proof not inconsistent with the facts herein stipulated and sub-[fol. 74] ject to the right of either party to object to the relevancy and materiality of any fact hereby stipulated to.

JOHN W. McCONNELL, JR.
As Attorney for Plaintiff

RALPH KENNAMER
As Attorney for Defendant

THEODORE D. PEYSER, JR.

U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED IN CLERK'S OFFICE
FEB. 1, 1961
WILLIAM J. O'CONNOR
CLERK

**SECTION 9 DEPRECIATION ISSUE—
STIPULATION OF FACTS**

1. At various times during the years 1942 through 1946 Plaintiff purchased 18 vessels from the United States Maritime Commission (hereinafter referred to as "Maritime") pursuant to Section 509 of the Merchant Marine Act, 1936, c.858, 49 Stat. 1985 (46 U.S.C. 1952 Ed., Sec. 1159). The total purchase price of the 18 vessels is stated in Contract No. MCc42281, Addendum No. 1, dated as of June 11, 1951, to be \$49,582,767.02. At the time of the original purchases of the said vessels \$6,449,107.02 was paid in cash, \$2,609,600.00 was paid through an allowance for 4 vessels traded in and delivered to Maritime, and vessel mortgages were given by Plaintiff in the amount of \$40,524,060.00 [fol. 75] representing the balance of said \$49,582,767.02. No gain was recognized for tax purposes on the trade-in of the 4 vessels by reason of Section 510(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1952 Ed., Sec. 1060(c)). The total adjusted basis of the 4 vessels traded in was \$175,876.40 at the time they were traded in. From the dates the vessels were purchased through March 7, 1946, Plaintiff made cash payments totaling \$9,786,339.19 in reduction of said mortgage indebtedness, leaving a balance due on the mortgages as of March 8, 1946, of \$30,737,720.81.

2. Upon delivery of 16 of said vessels to Plaintiff, they were chartered by the Government until various dates in 1946. At various times during the charters, the Government paid charter hire to the Plaintiff. On its Federal income tax returns for the year 1942 through 1946 Plaintiff reported such charter hire as income and deducted depreciation for said 18 vessels.

3. As of March 7, 1946, and prior to any adjustment in price under Section 9 of the Act, the basis of the 18 vessels claimed by Plaintiff and approved by Internal Revenue Service was \$47,149,043.42 (after adjustment for unrecognized gain on the 4 vessels traded in and prior to certain other adjustments not here in controversy), computed as follows:

Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46	\$16,235,446.21
Adjusted basis of 4 vessels traded in	175,876.40
Balance of mortgage indebtedness as of 3/7/46	30,737,720.81
	<hr/>
Basis as of 3/7/46	\$47,149,043.42

[fol. 76] 4. On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41 (50 U.S.C. Appendix 1952 ed., Sec. 1735), hereinafter referred to as "the Act". Under Section 4, citizens of the United States were given the right to purchase from the United States Maritime Commission war-built vessels at the statutory sales price defined in Section 3(d). Purchasers were required to pay at the time of sale at least 25% of the statutory sales price and the balance was payable in not more than twenty equal annual installments with interest at 3½% per annum.

By January 15, 1951, 843 ships had been sold under Section 4 of the Act. There were 264 vessels sold before March 8, 1946 and eligible for adjustment under Section 9. Plaintiff does not, however, consider the preceding sentences of this paragraph relevant to this proceeding.

Section 9 of the Act authorizes adjustments in price, upon application to Maritime, of certain vessels sold by Maritime to citizens of the United States prior to March 8, 1946.

5. Plaintiff filed an application with Maritime for an adjustment in the purchase price of each of the 18 vessels under Section 9 of the Act and said application was subsequently approved. On December 30, 1946, Plaintiff and Maritime entered into an "Interim Agreement" for an interim adjustment in the purchase price of the 18 vessels, said interim adjustment being subject to a final determination. A copy of the Interim Agreement is attached hereto as Exhibit S-1. The Interim Agreement provided that Plaintiff's unadjusted mortgage indebtedness as of March 8, 1946, with respect to the 18 vessels would be adjusted pursuant to Section 9(b), (2) and (3) of the Act by giving credit to the

[fol. 77] Plaintiff for the amount by which such unadjusted mortgage indebtedness exceeded 75 per centum of the statutory sales price of the 18 vessels, subject to a further adjustment upon the determination of the readjusted trade-in allowance of the 4 vessels traded in. The Interim Agreement provided further that the net credit to Plaintiff which resulted from subtracting the credit in favor of Maritime under Section 9(a)(6) (charter hire paid by United States to Plaintiff for the 18 vessels) from the sum of the credits in favor of the Plaintiff under Section 9(b)(1) and (4) (cash payments made by Plaintiff to Government on purchase price of the 18 vessels in excess of 25 Per centum of statutory sales price as of March 8, 1946), Section 9(b)(5) (the amount equal to interest on the cost of the 18 vessels less the amount of any trade-in allowance), Section 9(b)(6) (the amount that would have been paid by the United States to Plaintiff as charter hire for the 4 vessels traded in), and Section 9(b)(8) (the amount of overpayment of Federal taxes by Plaintiff), would be credited by Maritime on the mortgage indebtedness as adjusted under Section 9(b)(2) and (3).

6. By letter of January 3, 1951, the Commission forwarded certain schedules to the Plaintiff for its review and concurrence. Copy of said letters and schedules is attached hereto as Exhibit S-2. On sheet 6 of Schedule II, attached to Exhibit No. S-2, there is an item reading as follows: "18. Total net credit to owner before tax adjustment * * * \$20,038,698.41". Defendant contends that the figure of \$20,038,698.41 has no bearing on the cost of the vessels. As provided in the Final Agreement of June 11, 1951, the amount of the net tax credit under Section 9(b)(8) of the Act to which Plaintiff was entitled was subsequently determined to be \$430,205.66.

7. On June 11, 1951, Plaintiff and Maritime entered into a "Final Agreement" for a final adjustment in the price of [fol. 78] the 18 vessels pursuant to Section 9 of the Act, said Final Agreement being Addendum No. 1 to the Interim Agreement. A copy of the Final Agreement is attached hereto as Exhibit S-3.

8. The computations made with respect to the 18 vessels pursuant to the provisions of Section 9(b) are as follows:

(a) Section 9(b)(1) provides that, for each vessel, the applicant shall be given a credit for the excess of the cash payments made before March 8, 1946, over 25% of the statutory sales price and that, where cash payments made before March 8, 1946, do not equal 25% of the statutory sales price, the applicant shall pay to Maritime the difference between the amount so paid and 25% of the statutory sales price. Section 9(b)(4) provides that the applicant shall be credited with the excess of the sum of the cash payments made upon the original purchase price of the vessels, plus the adjusted trade-in allowance for the vessels traded in, over the statutory sales price of the vessels to the extent not credited under Section 9(b)(1). Under Section 3(d) of the Act and the Final Agreement Maritime determined the total statutory sales price of the 18 vessels to be \$17,997,981.84. The total net credit to Plaintiff under Section 9(b)(1) and (4) was \$11,735,950.74, computed as follows:

Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46	\$16,235,446.21
Less 25% of statutory sales price on the 18 vessels	4,499,495.47
Total net credit under Sec. 9(b)(1) and (4)	<u>\$11,735,950.74</u>

[fol. 79] (b) Sections 9(b)(2) and 9(b)(3) provide that the applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted and that the adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel over the sum of the cash payment retained by Maritime under Section 9(b)(1) plus the readjusted trade-in allowance (determined under Section 9(b)(7)) with respect to any vessel exchanged by the applicant on the original purchase. Pursuant to Section 9(b)(7) and the Final Agree-

ment, Maritime determined that the total readjusted trade-in allowance on the 4 vessels traded in by Plaintiff was \$312,557.44. Pursuant to the provisions of Section 9(b)(2) and (3), Plaintiff's mortgage indebtedness was reduced by \$17,551,791.88 from \$30,737,720.81 to \$13,185,928.93, computed as follows:

Balance of mortgage indebtedness as of 3/7/46		\$30,737,720.81
Statutory sales price	\$17,997,981.84	
Less 25% of statutory sales price	4,499,495.47	
Less readjusted trade-in allowance	312,557.44	
Adjusted mortgage indebtedness as of 3/8/46 under Sec. 9(b)(2) & (3)		13,185,928.93
Reduction in mortgage indebtedness as of 3/8/46 under Sec. 9(b)(2) & (3)		\$17,551,791.88

[fol. 80] (c) Section 9(b)(5) provides that, for each vessel, the applicant shall be given a credit equal to interest at the rate of $3\frac{1}{2}\%$ per annum on the original purchase price of the vessel, less any trade-in allowance, from the date of delivery to March 8, 1946. By virtue of this provision, Plaintiff was allowed credits totaling \$2,686,262.15.

(d) Section 9(b)(6) provides that, for each vessel, Maritime shall be allowed a credit equal to the charter hire paid to the applicant for use of the vessel under any charter party made prior to March 8, 1946. By virtue of this provision, Maritime was allowed credits totaling \$13,430,430.94.

(e) Section 9(b)(6) also provides that the applicant shall be allowed a credit of the amount that would have been paid by the United States as charter hire for bare boat use of vessels traded in on the original purchase for the period from the date on which the vessel traded in was delivered to

Maritime to March 8, 1946. By virtue of this provision, Plaintiff was allowed credits totaling \$1,495,124.58.

(f) Section 9(b)(8) provides that a credit shall be allowed to the applicant if an overpayment of taxes results from the application of Section 9(c)(1) and a credit shall be allowed to Maritime if a deficiency results from the application of Section 9(c)(1). Section 9(c)(1) provides that the applicant's Federal income taxes shall be recomputed on the following assumptions:

(1) Depreciation and amortization on the vessels up to March 8, 1946, shall not be allowable.

(2) Charter hire credited to Maritime under Section 9(b)(6) was never received by the applicant.

(3) Amounts credited to the applicant under Section 9(b)(5) and 9(b)(6) were income for the taxable year in which falls March 8, 1946:

[fol. 81] Recomputation of Plaintiff's taxes under these provisions resulted in a calculated overpayment of \$3,521,125.76 and a deficiency of \$3,090,920.10, or a net overpayment of \$430,205.66, for which Plaintiff was allowed credit.

(g) Section 9(b)(8) provides that, if the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of Maritime, Maritime shall pay such excess to the applicant. In this case, the sum of the credits in favor of applicant exceeded the sum of the credits in favor of Maritime by \$2,917,112.19, computed as follows:

~~Credits in favor of plaintiff—~~

Cash payments in excess of 25% of the statutory sales prices credited to Plaintiff under Section 9(b)(1) & (4) \$11,735,950.74

Interest credited to Plaintiff under Section 9(b)(5) 2,686,262.15

Charter hire credited to Plaintiff under Section 9(b)(6) 1,495,124.58

Tax credited to Plaintiff under Section 9(b)(8) 430,205.66

\$16,347,543.13

Credit in favor of Maritime—

Charter hire credited to Maritime under Section 9(b)(6) 13,430,430.94

\$ 2,917,112.19

[fol. 82] In the Final Agreement, the sum of \$2,917,112.19 is sometimes referred to as "the net cash credits of the applicant under Section 9" and sometimes referred to as "the final cash adjustment in favor of the applicant under Section 9". Maritime did not give Plaintiff a check for said sum of \$2,917,112.19 but pursuant to agreement between Plaintiff and Maritime, the mortgage indebtedness was reduced by \$2,917,112.19 as of March 8, 1946.

9. Pursuant to the provisions of Section 9 of the Act and the Final Agreement, Plaintiff's mortgage indebtedness was reduced as of March 8, 1946, by \$20,554,941.77 from \$30,737,720.81 to \$10,182,778.04, computed as follows:

Balance of original mortgage indebtedness
as of 3/7/46; (8 (b) hereof) \$30,737,720.81

Reduction in mortgage indebtedness as of
3/8/46 under Sec. 9(b)(2) & (3); (8 (b)
hereof) \$17,551,791.88

Computation of net credit to Plaintiff under
Sec. 9 (b)(1), (4), (5), (6) and (8) applied
to reduce mortgage indebtedness as of
3/8/46:

Sec. 9(b)(1) & (4); (8(a) hereof) \$11,735,950.74

Sec. 9(b)(5); (8(c) hereof) 2,686,262.15

Sec. 9(b)(6); (8(d) hereof)..... (13,430,430.94)

Sec. 9(b)(6); (8(e) hereof) 1,495,124.58

Sec. 9(b)(8); (8(f) hereof) 430,205.66

\$ 2,917,112.19

[fol. 83] Total amount by which mortgage
indebtedness reduced under Sec. 9 and
Final Agreement as of 3/8/46 (\$20,468,904.07)

Cash paid in reduction of mortgage in-
debtedness as of 3/8/46 per Final Agree-
ment (\$ 86,037.70)

The amount to which original mortgage
indebtedness was reduced as of 3/8/46 as
shown in Final Agreement \$10,182,779.04

The cash payment of \$86,037.70 set forth above was made
by Plaintiff to Maritime in reduction of the mortgage in-
debtedness as of March 8, 1946, pursuant to the Final
Agreement. Said cash payment was exclusive of and in ad-
dition to any benefit to Plaintiff under the provisions of
Section 9.

10. In the years 1946 through 1948, Plaintiff bought 32
vessels from the Commission under Section 4 of the Act.
For each vessel, Plaintiff paid an amount equal to the statu-

tory sales price and has treated this amount as the cost of the vessel for tax purposes.

11. Plaintiff contends that, pursuant to the provisions of Section 9 of the Act, the price of the 18 vessels was adjusted and reduced by \$20,468,904.07 and that the basis of said vessels as of March 7, 1946, of \$47,149,043.42 was also adjusted and reduced by \$20,468,904.07. Plaintiff therefore contends that the basis of the 18 vessels as of March 8, 1946, was \$26,680,139.35, computed as follows:

Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46	\$16,235,446.21
[fol. 84] Adjusted basis of 4 vessels traded in	175,876.40
Cash paid in reduction of mortgage indebtedness as of 3/8/46 per Final Agreement	86,037.70
Remaining mortgage indebtedness as of 3/8/46 after adjustments	10,182,779.04
Basis as of 3/8/46	\$26,680,139.35

12. Defendant contends that pursuant to the provisions of Section 9 of the Act the price of the 18 vessels was adjusted and reduced to \$17,997,981.84, their statutory sales prices and the price Plaintiff would have had to pay for the vessels if they had been sold by Maritime to Plaintiff on March 8, 1946, and not before that date. Defendant therefore contends that the unadjusted basis of the 18 vessels as of March 8, 1946, was \$17,997,981.84.

13. Plaintiff owned all of the 18 vessels during the calendar years 1947 through 1950, except one of the vessels (SS Warrior) which it sold on September 28, 1948: Plaintiff is therefore entitled to a depreciation deduction for all 18 of said vessels for the calendar year 1947 and for that part of the calendar year 1948 through September 28, 1948, and a depreciation deduction for 17 of said vessels for that part of the calendar year 1948 from September 29, 1948, through December 31, 1948, and for the calendar years 1949 and 1950. In order to avoid unnecessary repetition and further

detailed computations, Plaintiff and Defendant hereby stipulate to the following:

[fol. 85] (a) Plaintiff contends that the basis of the 17 vessels owned by Plaintiff subsequent to September 28, 1948, adjusted for unrecognized gain on the trade-in of 3 vessels was \$25,902,565.91, computed as set forth in Paragraph 11 hereof after making adjustments in said computation due to the sale of the SS Warrior (said basis being subject to certain adjustments not here in controversy).

(b) Defendant contends that the unadjusted basis of the 17 vessels owned by Plaintiff subsequent to September 28, 1948, was \$17,030,195.84 (said unadjusted basis being subject to certain adjustments not here in controversy).

(c) If the Court determines that the basis of all 18 of the vessels was \$26,680,139.35 as contended by Plaintiff in Paragraph 11 hereof, the proper basis of the 17 vessels owned by Plaintiff subsequent to September 28, 1948, adjusted for unrecognized gain on the trade-in of 3 vessels was \$25,902,565.91 as contended by Plaintiff in (a) of this paragraph.

(d) If the Court determines that the unadjusted basis of all 18 of the vessels was \$17,997,981.84 as contended by Defendant in Paragraph 12 hereof, the proper basis of the 17 vessels owned by Plaintiff subsequent to September 28, 1948, was \$17,030,195.84 as contended by Defendant in (b) of this paragraph.

14. In computing Plaintiff's Federal income tax liability for the years 1947 through 1950, Plaintiff claimed, and the Commissioner of Internal Revenue allowed, a deduction for depreciation on the vessels in question. In Plaintiff's Federal Income Tax Returns for the years 1947 through 1950, Plaintiff used the statutory sales prices (with certain adjustments) of the vessels as the basis for depreciation and the Commissioner, upon audit of said Returns, also used and approved the statutory sales prices (with certain adjustments) of the vessels as the basis for depreciation. Upon said audit, the Commissioner used and approved as the basis for depreciation of the 18 vessels owned by Plain-

tiff through September 28, 1948, the total statutory sales prices of \$17,997,981.84, adjusted downward on account of net unrecognized gain on the trade-in of the 4 vessels traded in of \$136,681.04 (computed by subtracting the adjusted basis of \$175,876.40 from the adjusted trade in allowance of \$312,557.44) and adjusted further in certain other amounts.

15. On its Federal Income Tax Return for the year 1948 Plaintiff reported and the Commission of the Internal Revenue Service allowed a gain on the sale of the SS Warrior one of the 18 vessels in question, using as its basis its statutory sales price with certain adjustment.

U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED IN CLERK'S OFFICE

FEB. 1, 1961

WILLIAM J. O'CONNOR
CLERK

[fol. 87]

EXHIBIT S-3

CONTRACT NO. MCc-42281
ADDENDUM NO. 1

FINAL AGREEMENT
FOR ADJUSTMENT FOR PRIOR SALES
PURSUANT TO SECTION 9 OF THE
MERCHANT SHIP SALES ACT OF 1946

THIS FINAL AGREEMENT (herein called "Agreement") entered into as of the 11th day of June, 1951, between the UNITED STATES OF AMERICA (herein called "Government"), represented by the DEPARTMENT OF COMMERCE (MARITIME ADMINISTRATION) (herein called "Maritime"), and WATERMAN STEAMSHIP CORPORATION (herein called "Applicant"), a corporation organized and existing under the laws of the State of Alabama.

WITNESSETH THAT:

WHEREAS:

I. As of the 30th day of December, 1946, the United States Maritime Commission (herein called "Commission") and the Applicant entered into an interim agreement, designated as Contract No. MCc-42281, for a tentative adjustment in the price of 18 vessels (herein called "War-built Vessels"), of the C2-S-E1 type, described in exhibit A, attached hereto and made a part hereof, pursuant to the provisions of section 9 of the Merchant Ship Sales Act of 1946 (herein called "Act");

II. Maritime has succeeded to all of the rights, powers, duties, and functions of the Commission under the Act;

[fol. 88] III. Maritime has now determined the net sum of the credits in favor of the Applicant as the result of section 9 adjustments, exclusive of tax adjustments;

IV. On the basis of said determination by Maritime, the Bureau of Internal Revenue has now determined the amount of overpayments and deficiencies in Federal taxes of the Applicant as provided in sub-section (c)(1) of section 9 of the Act; and

V. The Applicant and the Government have mutually agreed to settle, fully and finally, their respective rights and obligations under section 9 of the Act in the manner and upon the terms set forth below;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

IDENTIFICATION AND CONSTRUCTION OF THE WAR-BUILT VESSELS

The aforesaid exhibit A sets forth a description of the War-built Vessels by their (1) names; (2) official numbers, and (3) hull numbers, together with (4) the numbers and dates of the contracts between the Commission and the

builder which constructed the War-built Vessels (herein called "Construction Contracts"), (5) the numbers and dates of the contracts of purchase (herein called "Purchase Contracts") of the War-built Vessels from the Commission by the Applicant, and (6) the dates of delivery of the War-built Vessels from the yard of the builder to the Applicant.

[fol. 89]

ARTICLE 2

CREDITS IN FAVOR OF APPLICANT

The original purchase prices of the War-built Vessels under the Purchase Contracts, as set forth on line 1 of each of the sheets 1, 3, and 5 of exhibit B, attached hereto and made a part hereof, are subject to deductions, in the case of the SS's AFOUNDRIA, JEAN LaFITTE, WACOSTA, and WARRIOR, in the amounts of the original trade-in allowances, allocable among the aforesaid four of the War-built Vessels as set forth on said line 1 of said sheets 1, 3, and 5 of said exhibit B, and line 10 of exhibit E, attached hereto and made a part hereof.

Said original purchase prices, less said original trade-in allowances, are subject to further deductions in the amount of the balance of the original mortgages on the War-built Vessels up to March 8, 1946, the date of enactment of the Act, as set forth on line 1 of sheets 1, 3, and 5 of said exhibit B, making the amount of the cash payments made as of March 8, 1946, (after adjustments of the original purchase prices for the original trade-in allowances and the balance of the original mortgages up to March 8, 1946) total \$16,235,446.21, as set forth on said line 1 of sheet 5 of exhibit B, which said sum is allocable among the War-built Vessels as set forth on said line 1 of sheets 1, 3, and 5 of said exhibit B.

The statutory sales price for each of the War-built Vessels as of March 8, 1946, adjusted on account of the presence and the absence of desirable features, as provided in subsections (d)(2) and (d)(3) of section 3 of the Act, and adjusted for normal and war-service depreciation, as provided in subsection (d)(4) of section 3 of the Act, is as

set forth on line 8 of each of the three sheets of exhibit D, [fol. 90] attached hereto and made a part hereof. In the case of the SS's AFOUNDRIA, AZALEA CITY, BIENVILLE, FAIRISLE, FAIRLAND, JEAN LaFITTE, RAPHAEL SEMMES, WACOSTA, and WARRIOR, the aforesaid statutory sales price, adjusted as aforementioned, is less than the floor price under subsection (d) of section 3 of the Act, wherefore the statutory sales price of each of said nine of the War-built Vessels is adjusted to the floor price of a standard vessel of the same type, adjusted, on account of the presence and the absence of desirable features, as set forth on line 12 of exhibit D. Therefore, the statutory sales prices of the War-built Vessels as of March 8, 1946, adjusted for the presence and the absence of desirable features, depreciation, and the floor price, total \$17,997,981.84, as set forth on line 13 of sheet 6 of exhibit B, allocable among the War-built Vessels as set forth on line 11 of sheets 2, 4, and 6 of said exhibit B. Twenty-five per centum of said statutory sales prices, adjusted as aforementioned, totals \$4,499,496.47, as set forth on line 2 of sheet 5 of exhibit B, allocable among the War-built Vessels as set forth on line 2 of sheets 1, 3, and 5 of said exhibit B.

Accordingly, the amounts to be credited to the Applicant, pursuant to subsections (b)(1) and (b)(4) of section 9 of the Act, as the excess of the sum of the cash payments made as of March 8, 1946, upon the original purchase price of the War-built Vessels, adjusted by deduction of the original trade-in allowances and the balance of the original mortgages as of March 8, 1946, over 25 per centum of the statutory sales prices of the War-built Vessels as of March 8, 1946, adjusted for the presence and the absence of desirable features, depreciation, and the floor price, is \$11,735,950.74, as set forth on line 3 of sheet 5 of exhibit B, allocable among the War-built Vessels as set forth on line 3 of sheets 1, 3, and 5 of said exhibit B.

[fol. 91] The net amount to be credited to the Applicant, pursuant to the provisions of subsection (b)(5) of section 9 of the Act, as the equivalent of interest at the rate of

3½ per centum per annum from the date of the original delivery of the War-built Vessels to the Applicant up to March 8, 1946, on \$46,973,167.02, the original purchase prices less the original trade-in allowances (line 3 of sheet 3 of exhibit C, attached hereto and made a part hereof.) reduced by the interest on the original mortgage indebtedness of the Applicant accrued up to March 8, 1946, and unpaid, totals \$2,686,262.15, as set forth on line 4 of sheet 5 of exhibit B, allocable among the War-built Vessels as set forth on line 4 of sheets 1, 3, and 5 of said exhibit B, and computed as set forth in exhibit C.

The amount to be credited to the Applicant as the charter hire which would have been paid on vessels exchanged by the Applicant (as set forth on sheet 2 of exhibit F, attached hereto and made a part hereof) on the original purchase price of the SS's AFOUNDRIA, JEAN LaFITTE, WACOSTA, and WARRIOR, for the period beginning with the date of delivery of the exchanged vessels to the Commission and extending up to March 8, 1946, pursuant to the provisions of sub-section (b)(6) of section 9 of the Act, totals \$1,495,124.58, as set forth on line 5 of sheet 5 of exhibit B, allocable among the aforesaid four of the War-built Vessels as set forth on line 5 of said exhibit B.

The sum of the aforementioned credits for excess cash payments, interest, and charter hire which would have been paid on vessels traded in, is thus \$15,917,337.47, as set forth on line 6 of sheet 5 of exhibit B, allocable among the War-built Vessels as set forth on line 6 of sheets 1, 3, and 5 of said exhibit B.

[fol. 92]

ARTICLE 3

CREDITS IN FAVOR OF THE GOVERNMENT

Pursuant to the provisions of subsection (b)(6) of section 9 of the Act, the amount paid by the Government as charter hire for the use of 16 of the War-built Vessels under charters made prior to March 8, 1946, totals \$13,430,430.94, allocable among said 16 of the War-built

Vessels as set forth on line 7 of sheets 1, 3, and 5 of exhibit B, and allocable as between the time charters and the bareboat charters of the War-built Vessels as set forth on sheet 1 of exhibit F, attached hereto and made a part hereof.

According to the Internal Revenue Bureau, the total net over-payment of Federal taxes by the Applicant, resulting from the application of the provisions of subsection (c)(1) of section 9 of the Act, is \$430,205.66, which is the sum of \$3,521,125.76 (over-payments) less the sum of \$3,090,920.10 (deficiencies), which said overpayments and deficiencies are set forth on line 8 of sheet 5 of exhibit B, and allocable among 17 of the War-built Vessels as set forth on line 8 of sheets 1, 3, and 5 of said exhibit B.

Accordingly, the net sum of the credits in favor of the Government is \$13,000,225.28, which is the aforesaid sum of \$13,430,430.94 less the aforesaid sum of \$430,205.66, and which is allocable among the War-built Vessels as set forth on line 9 of sheets 1, 3, and 5 of exhibit B.

ARTICLE 4

NET CASH CREDITS •

The net amount of the final cash adjustment in favor of the Applicant under section 9 of the Act is \$2,917,112.19, [fol. 93] which is the aforesaid sum of \$15,917,337.47 less the aforesaid sum of \$13,000,225.28, and which is allocable among the War-built Vessels as set forth on line 10 of sheets 1, 3, and 5 of exhibit B.

ARTICLE 5

MORTGAGE ADJUSTMENT AND DISPOSITION OF APPLICANT'S NET CASH CREDITS

The initial adjusted mortgage indebtedness of the Applicant as of March 8, 1946, under subsections (b)(1), (b)(2), and (b)(3) of section 9 of the Act, totals \$13,185,928.93, as set forth on line 16 of sheet 6 of exhibit B, allocable among the War-built Vessels as set forth on line 14 of sheets 2, 4, and 6 of said exhibit B.

Notwithstanding any other provision of this Agreement and pursuant to the provisions of article XI of Contract No. MCc-42281, to which this Agreement is Addendum No. 1, the adjusted mortgage-indebtedness of the Applicant on the SS's ANDREW JACKSON, CITY OF ALMA, HASTINGS, KYSKA, MADAKET, MAIDEN CREEK and YAKA (upon the cost of which said seven of the War-built Vessels the cash payments shown in exhibit H, attached hereto and make a part hereof, have been made by the Applicant under the provisions of section 112(f) of the Internal Revenue Code relating to involuntary conversions) is hereby further adjusted by reducing said indebtedness in the amount of \$3,003,149.89, as set forth on line 17 of exhibit B, which said sum is allocable among the seven vessels as set forth on said line 17 of said exhibit B.

Accordingly, the final, adjusted mortgage indebtedness of the Applicant as of March 8, 1946, on the 18 War-built [fol. 94] Vessels totals \$10,182,779.04 (line 18 of sheet 6 of exhibit B) which is the aforesaid sum of \$13,185,928.93 less the aforesaid sum of \$3,003,149.89 (line 17 of sheet 6 of exhibit B).

By reason of the aforesaid reduction in the mortgage indebtedness of the Applicant in the amount of \$3,003,149.89, whereas the net cash credits of the Applicant under section 9 of the Act total only \$2,917,112.19, the Applicant agrees that, upon its receipt of an invoice from the Government, the Applicant will promptly pay to the Government the amount of \$101,378.06, consisting of the sum of \$86,037.70, as set forth on line 12 of sheet 5 of exhibit B, (which is the aforesaid sum of \$3,003,149.89 less the aforesaid sum of \$2,917,112.19), plus interest, totaling \$15,340.36, computed at the rate of 3½ per centum per annum from March 8, 1946, to June 11, 1951, the effective date of this Agreement.

In addition to the amount of \$101,378.06 covered in the above paragraph, there is due to be refunded to the Commission, with interest, the sum of \$170,716.24, representing the net excess of the interim credits in favor of the Applicant pursuant to paragraph (f) of article XII of the

aforesaid Contract No. MCo-42281 and based on the preliminary determination of the adjustments, which have been credited by the Commission as of December 30, 1946, the date of the interim agreement, on the initial mortgage indebtedness of the Applicant on eleven of the War-built Vessels which were designated by the Applicant, namely, the SS's AFOUNDRIA, AZALEA CITY, BIENVILLE, FAIRISLE, FAIRLAND, FAIRPORT, JEAN LaFITTE, JOHN B. WATERMAN, RAPHAEL SEMMES, WACOSTA, and WARRIOR. Accordingly, the Applicant agrees that, upon the receipt of an invoice from the Government, the Applicant will promptly pay to the Government the sum of \$170,716.24, plus interest totaling [fol. 95] \$26,568.59, computed at the rate of 3½ per centum per annum from December 30, 1946, (the date as of which that sum was tentatively credited by the Commission on the initial adjusted mortgage indebtedness of the Applicant on the eleven of the War-built Vessels named in the preceding sentence) to June 11, 1951, the effective date of this Agreement, making a total amount of \$197,284.83.

The Applicant agrees, therefore, that, upon receipt of an invoice from the Government, as aforesaid, it will promptly pay to the Government, by check, the grand total of \$298,662.89 (which is the aforesaid sum of \$101,378.06 plus the aforesaid sum of \$197,284.83).

Payments of principal and interest on and after March 8, 1946, against the mortgage indebtedness, if any, of the Applicant with respect to the War-built Vessels, in excess of the amounts of principal and interest which would have been payable had such adjustment been in effect on and after March 8, 1946, shall be applied as a further payment against the mortgage indebtedness of the Applicant with respect to the War-built Vessels or other vessels of the Applicant, whether or not matured, (such indebtedness to be designated by the Applicant), effective in either instance as of the date each such excess payment actually was made. Any balance of such moneys remaining after such application shall be paid to the Applicant in cash.

ARTICLE 6

EXCESS CHARTER HIRE FOR USE ON AND AFTER MARCH 8, 1946

The amount to which the Government is entitled, under subsection (c) of section 9 of the Act, as a refund of excess [fol. 96] charter hire for the period beginning March 8, 1946, to date of redelivery, for use of 16 of the War-built Vessels, totals, net, \$368,377.38 (which said sum has heretofore been refunded to the government by the Applicant), as set forth on line 21 of sheet 6 of exhibit B, allocable among the 16 vessels as set forth on line 21 of sheets 2, 4, and 6 of said exhibit B, which said sum consists of \$352,559.32, covering excess charter hire paid on and after March 8, 1946, and \$15,818.06, covering excess charter hire allowed in the settlement of the redelivery obligations of the Government, as set forth in exhibit G, attached hereto and made a part hereof.

ARTICLE 7

FINALITY OF SETTLEMENT

The adjustments and credits provided for in this Agreement are final and complete as between the parties with respect to the purchase price of the War-built Vessels, and constitute an agreement as to the full, final, and complete discharge of the respective liabilities of the parties, one to the other, under the provisions of all contracts between the parties respecting the prices of the War-built Vessels and under the provisions of the Act.

ARTICLE 8

PROVISIONS REQUIRED BY SECTION 9(c) OF THE ACT

The Applicant, on behalf of itself and all affiliated interests as defined in subsection (g) of section 3 of the Act, (for whom the Applicant warrants it has authority to make such agreement) agrees with Maritime that:

- (1) Depreciation and amortization, allowed or allowable with respect to the War-built Vessels up to March 8, [fol. 97] 1946, for Federal tax purposes, shall be treated as not having been allowable; amounts credited to the Applicant, under subsections (b)(5) and (b)(6) of section 9 of the Act, shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls March 8, 1946.
- (2) The liability of the Government for use (exclusive of service, if any, required under the terms of the charter) of any of the War-built Vessels covered by this Agreement, on or after March 8, 1946, under any charter party shall not exceed 15 per centum per annum of the statutory sales price of any such of the War-built Vessels as of March 8, 1946.
- (3) The compensation, if any, paid to the Applicant by the Government for use, if any, of all or any of the War-built Vessels during the existence of the national emergency declared by the President on May 27, 1941 (which terminated on April 28, 1952, by Proclamation 2974 of the President), pursuant to a taking, or pursuant to bareboat charters made, on or after March 8, 1946, has been adjusted so that it is in no event greater than 15 per centum of the statutory sales prices as of such date.

ARTICLE 9

STATUTORY REQUIREMENTS

The Applicant warrants that it has not employed any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director in connection with this Agreement. No Member of or Delegate to Congress, [fol. 98] nor Resident Commissioner, has been or shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom, except as provided in

section 116 of the Act approved March 4, 1909 (35 Stat. 1109).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in quintuplicate as of the 11th day of June, 1951.

UNITED STATES OF AMERICA
By: DEPARTMENT OF COMMERCE
(MARITIME ADMINISTRATION)

By: G. B. PROWSE
For: L. C. SMITH
Acting Chief Division of Claims

WATERMAN STEAMSHIP
CORPORATION

By: W. B. GARNER
Title: Executive Vice-President

(SEAL)
ATTEST:-

J. A. TOWNSEND
Secretary

Approved as to form:

GLADYS W. RINGER
Chief, Claims and Renegotiation Branch
Office of the General Counsel

[fol. 99] I, J. A. Townsend, certify that I am the duly chosen, qualified, and acting Secretary of Waterman Steamship Corporation, a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that W. B. Garner, who signed this Agreement on behalf of said corporation, was then the duly qualified Executive Vice-President of said corporation; that said officer affixed his manual signature to said Agreement in his official capacity as said officer for and on behalf of said corporation by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the corporate and lawful powers of this corporation

J. A. TOWNSEND
Secretary

(CORPORATE SEAL)

WATERMAN STEAMSHIP CORPORATION
ADJUSTMENT FOR PRIOR SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LINE NO.	CHARGES TO APPLICANT	AFONTERIA	ARMEN	ATAZUA	ELIZAVILLE	CITY OF ALMA	PAINTERS
1	Original Purchase Prices (Exh.C) Less: Orig. Trade-in Allowances Less: Bal. of Orig. Megas up to 3-8-46	\$ 2,698 763.77 686,900.00 1,810,098.00	2,691,194.97 -0- 1,999,235.54	3,001,657.44 -0- 1,379,869.62	3,000,000.00 -0- 1,416,280.00	2,666,493.54 -0- 1,887,232.33	3,023,805.86 -0- 2,671,681.84
2	Total Cash Payments as of 3-8-46	201,765.77	731,959.43	1,622,397.82	1,943,720.00	739,250.01	2,196,104.04
3	Less: 25% of Adj. Stat.Sales Prices (Exh.D)	241,942.00	291,345.00	344,567.00	241,942.00	253,080.17	245,952.00
4	3 Credit for Known Cash Payments	(40,176.23)	450,614.43	1,377,820.82	1,341,773.00	426,237.04	1,990,252.04
5	Add: Interest Credit (Exh.C)	142,573.39	59,134.19	271,734.08	277,526.46	55,131.48	378,432.41
6	Charter Hire Which Would Have Been Paid on Vessels Traded in (Exh.F)	372,717.86	-0-	-0-	-0-	-0-	-0-
7	TOTAL CREDITS TO APPLICANT	475,115.02	239,748.62	1,649,554.90	1,619,304.46	941,369.32	2,328,608.45
8	CHARGES TO MARITIME ADMINISTRATION						
9	Charter Hire Paid by U.S. Gov't (Exh. A)	940,027.00	386,748.92	1,206,737.23	1,846,412.13	334,969.89	1,598,089.77
10	Deduct: Overpayment of Federal Taxes	578,304.32	180,161.79			150,634.36	
11	Add: Deficiency of Federal Taxes			473,464.02	528,553.46		697,192.72
12	NET CREDITS TO GOVERNMENT	361,722.68	206,586.73	1,680,201.25	1,770,965.59	181,335.53	2,893,849.56
13	NET CREDITS TO APPLICANT	113,392.34	333,161.89	(30,046.35)	(151,661.13)	360,033.79	35,434.89
14	Less: Amount of 112(r) Funds Applied to Megas. (Line 17)	-0-	447,819.46	-0-	-0-	446,144.30	-0-
15	Resulting Cash Deficiency Payable to Maritime	113,392.34	(114,657.57)	(30,046.35)	(151,661.13)	(86,110.51)	35,434.89

EXHIBIT 1
Sheet 2 of 6

WATERMAN STEAMSHIP CORPORATION

ADJUSTMENT FOR PRIOR SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LINE NO.	MORTGAGE ADJUSTMENT	APOLAKERIA	ANDREA JACKSON	AZALEA CITY	BUENAVILLE	CITY OF ALMA	PAYMENTS
13	Adj. Stat. Sales Prices (Exh. D)	\$ 967,768.00	1,005,380.00	978,268.00	967,768.00	1,612,080.68	983,728.00
14	Less: 25% Thereof Treated as Paid in Cash as of 3-8-46						
15	Less: Red.J. Trade-in Allowance (Exh. E)	241,942.00	251,345.00	244,567.00	241,942.00	253,080.17	245,532.00
16	Adjusted Mortgages as of 3-8-46	725,826.00	-0-	-0-	-0-	-0-	-0-
17	Less: Balance of 112(f) Funds (Exh. E)	646,590.00	754,035.00	733,701.00	725,886.00	759,060.51	737,796.00
18	Mortgage Balance as of 3-8-46 ^{as of 3-8-46}	-0-	447,819.46	-0-	-0-	446,144.30	-0-
19	Balance of Original Balance as of 3-8-46	646,590.00	306,215.54	733,701.00	725,886.00	312,916.21	737,796.00
20	Reduction in Mortgage Indebtedness	1,810,098.00	1,979,235.24	1,379,269.62	1,416,260.00	1,667,235.53	667,691.48
21	Macarandum: Excess Charter Hire on and after 3-8-46 to be Refunded by Owner	1,163,508.00	1,633,020.60	645,269.62	690,494.00	2,276,319.32	69,629.48
		\$ 12,990.66	35,220.69	(879.20)	24,083.22	35,750.25	8,031.32

EXHIBIT B
Sheet 3 of 6

VETERANS STEAMSHIP CORPORATION
ADJUSTMENT FOR PRIOR SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LINE NO.	CREDITS TO APPLICANT	JUNE 30, 1946				JUNE 30, 1946	TOTAL
		<u>PAYABLE</u>	<u>PAYABLE</u>	<u>EASTING</u>	<u>JEAN LAFITTE</u>	<u>WATKINS</u>	
1	Original Purchase Prices (Exh. C) Less: Orig. Trade-in allowances Less: Bal. of Orig. Wages as of 3-8-46 Total Cash Payments as of 3-8-46 Less: 2% of Adj. Stat. Sales Prices (Exh. D)	\$ 3,056,211.74 -0- 2,143,800.00 2,093,793.38	\$2,450,070.78 -0- 2,143,800.00 306,270.78	2,646,706.03 -0- 1,912,835.24 729,870.49	2,808,904.50 676,000.00 1,919,500.00 213,404.50	2,768,336.61 -0- 2,832,200.00 349,136.61	2,442,739.31 -0- 1,804,446.11 638,293.00
2	Credit for Unpaid Cash Payments	1,847,661.36	37,352.73	483,550.99	(28,537.50)	79,886.61	376,504.89
3	Add: Interest Credit (Exh. C)	373,105.27	268.31	100,863.33	132,763.61	-0-	7,893.91
4	Add: Charter Hire Which Would Have Been Paid on Vessels Traded in (Exh. F)	-0-	-0-	-0-	531,736.34	-0-	-0-
5	TOTAL CREDITS TO APPLICANT	<u>2,220,766.69</u>	<u>37,617.04</u>	<u>583,814.32</u>	<u>552,922.45</u>	<u>79,886.61</u>	<u>382,107.17</u>
<u>CREDITS TO MARITIME ADMINISTRATION</u>							
6	Charter Hire Paid by U.S. Gov't. (Exh. F)	1,566,393.95	-0-	517,732.52	1,050,047.96	-0-	180,345.08
7	Deduct: Overpayment of Federal Taxes	-0-	-0-	294,099.88	647,334.39	-0-	38,989.34
8	Add: Deficiency of Federal Taxes	704,287.92	1,209.26	-0-	-0-	-0-	-0-
9	NET CREDIT TO GOVERNMENT	<u>2,270,681.94</u>	<u>1,209.26</u>	<u>263,636.64</u>	<u>404,713.57</u>	<u>-0-</u>	<u>81,739.74</u>
10	NET CREDIT TO APPLICANT	(89,915.29)	36,107.48	320,177.68	151,868.88	79,886.61	308,027.97
11	Less: Amount of 1 1/2 (r) Funds Applied to Wages (Line 17)	-0-	-0-	152,844.96	-0-	-0-	376,504.88
12	Resulting Cash Deficiency Payable to Maritime	<u>(89,915.29)</u>	<u>36,107.48</u>	<u>(132,667.28)</u>	<u>151,868.88</u>	<u>79,886.61</u>	<u>(79,476.91)</u>

[fol. 103]

EXHIBIT B
Sheet 4 of 6

WATSON STEAMSHIP CORPORATION
ADJUSTMENT FOR PRICE SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LINE NO.	MEMORANDUM	PAYLAND	FALMOUTH	EASTINGS	JEAN LAVITTE	WATSON	WMA
13	Adjusted Net Sales Prices (Exh. D)	\$ 983,728.00	1,075,672.19	985,277.99	967,768.00	1,077,000.00	1,047,147.19
14	Less: 2% Thereof Treated as Paid in Cash as of 3-8-46	245,932.00	268,918.05	246,319.50	241,942.00	269,250.00	261,765.80
15	Less: Readjusted Trade-in Allowance (Exh. E)	-0-	-0-	-0-	22,025.00	-0-	-0-
16	Adjusted Mortgage as of 3-8-46	737,796.00	806,754.14	738,958.49	673,801.00	807,750.00	785,380.39
17	Less: Balance of 112(c) Funds (Exh. E)	-0-	-0-	422,844.96	-0-	-0-	376,205.20
18	Mortgage Balance as of 3-8-46	737,796.00	806,754.14	286,113.53	673,801.00	807,750.00	409,175.19
19	Balance of Original Mortgage as of 3-8-46	942,618.36	2,143,800.00	1,912,535.24	1,919,280.00	2,143,800.00	1,809,148.21
20	Reduction in Mortgage Indebtedness	204,822.36	1,337,045.86	1,626,422.01	1,245,719.00	1,631,450.00	1,397,972.32
21	Memorandum: Excess Charter Hire on and after 3-8-46 to be Refunded by Owner	7,342.47	-0-	17,791.40	8,598.18	-0-	8,150.13

WATERMAN STEAMSHIP CORPORATION

ADJUSTMENT FOR PRICE SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LINE NO.	DEBITS TO APPLICANT	BUDGET	WALDEN CHECK	RAPHAEL SERVICES	WACOSTA	WARRICK	YAMA	TOTAL
1	Original Purchase Prices (Encl. C) \$2 641,046.21 Less: Orig. Trade-in Allowances Less: Bal. of 1946. Mages up to 3-8-46 Total Cash Payments as of 3-8-46 Less: 40% of Adl. Stat. Sales Prices (Encl. D) 3 Credit for Excess Cash Payments 4 Add: Interest Credit (Encl. C) 5 Add: Charter Hire Which Would Have Been Paid on Vessels Traded in (Encl. F)	\$2 641,046.21 -0- 1,908,832.54 732 210.67 246,832.25 423,378.42 97,806.80 -0- 579 195.22	2,419 159.53 -0- 1,779,057.53 640,091.00 263,864.76 376,226.24 3,805.47 -0- 380,031.71	3,045,958.66 -0- 938,275.86 2,106,982.80 245,932.00 1,861,050.80 345,815.24 -0- 2,206 866.04	2,660 169.32 686,700.00 1,177,530.00 190,039.32 241,942.00 413,902.68 107,245.27 -0- 489,899.74	2,991,127.82 560 000.00 2,007,114.00 423,713.82 241,942.00 101 771.82 214,161.71 322,103.23 719,036.76	2,615,102.31 -0- 1,885,230.52 728,566.77 244,020.54 404,400.83 103,159.62 -0- 572,676.45	49,592,767.02 2,669,600.00 32,177,789.81 16,335,446.21 4,499,499.47 11,729,970.74 2,686,866.15 1,499,149.52 20,917,337.47
6	TOTAL CREDITS TO APPLICANT	579 195.22	380,031.71	2,206 866.04	489,899.74	719,036.76	572,676.45	20,917,337.47
7	CREDITS TO MARITIME ADMINISTRATION							
7	Charter hire paid by U.S. Gov't (Encl. F)	440,613.36	67,713.42	1,406,494.56	705,806.27	1,173,964.13	572,335.15	13,430,430.94
8	Deduct: Overpayment of Fed. Taxe Add: Deficiency of Federal Taxe	213,894.88	14,940.40		382,701.46	771,639.96	890,872.98	3,921,129.76
9	NET CREDITS TO GOVERNMENT	226,718.48	52,773.02	671,245.28	323,104.81	402,324.17	281,462.17	13,000,895.28
10	NET CREDITS TO APPLICANT	352,426.74	327,258.69	49,426.80	46,804.93	315,712.59	305,214.28	8,917,112.19
11	Less: Amount of 112(f) Funds Applied to Mages (line 17)	450,332.21	374,426.24	-0-	-0-	-0-	479,070.52	2,706,119.89
12	Resulting Cash Deficiency Payable to Maritime	(197,905.47)	(47,167.55)	49,426.20	46,804.93	315,712.59	(149,864.24)	(66,037.70)

[fol. 105]

EXHIBIT B
Sheet 6 of 6

NATIONAL STEAMSHIP CORPORATION

ADJUSTMENT FOR PRIOR SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LIN NO.	REPLACES ADJUSTMENT	DEBIT	MAJORS CREDIT	PAYABLE SHOULD	MAJORS	MAJORS	TOTAL
13	Adjusted Stat. Sales Prices (Exh. B)	\$ 995,366.99	1,079,459.05	963,768.00	967,768.00	976,943.75	17,997,981.46
14	Less: 25% Dividend Treated as Paid in Cash as of 3-8-46	248,832.25	263,864.76	245,932.00	241,942.00	244,085.94	4,499,495.47
15	Less: Readjusted Trade-in Allowances (Exh. B)	-0-	-0-	-0-	104,976.44	-0-	319,977.44
16	Adjusted Mortgage as of 3-8-46	746,496.74	791,594.29	737,786.00	680,849.56	734,277.81	13,185,983.33
17	Less: Balance of 112(1) Funds (Exh. B)	450,332.21	374,426.24	-0-	-0-	579,078.22	3,039,132.89
18	Mortgage Balance as of 3-8-46	296,164.53	417,168.05	737,796.00	680,849.56	277,179.59	10,386,779.46
19	Balance of Original Mortgage as of 3-8-46	1,808,835.24	1,779,067.53	938,272.86	1,173,430.00	1,665,232.24	30,737,780.81
20	Reduction in Mortgage Indebtedness	1,612,671.01	1,351,999.43	800,479.86	1,134,580.44	1,357,908.00	1,609,396.23
21	Macpallum: Excess Charter Hire on and after 3-8-46 to be Refunded by Owner	\$ 12,251.63	22,057.67	27,256.71	86,839.02	29,932.97	359,377.32

EXHIBIT C
Sheet 1 of 2

THE STEEL STEAMSHIP CORPORATION

CREDIT TO APPLICANT FOR AN AMOUNT EQUAL TO INTEREST AT 3% PER CENTUM PER ANNUM
FROM DATE OF DELIVERY TO MARCH 8, 1946, PURSUANT TO SECTION 9(b)(5).

LINE	FOUNDERAL	JAMES JACKSON	211A CITY	BIENVILLE	CITY OF ALA	P. HARRIS
1 Original Purchase Price	2,698,763.77	2,691,194.97	2,301,657.44	3,000,000.00	2,626,493.54	3,023,805.28
2 Less: Original Trade-in Allowance	286,900.00	0 -	0 -	0 -	0 -	0 -
3 Original Purchase Price Less Original Trade-in Allowance	2,411,863.77	2,691,194.97	3,001,657.44	3,000,000.00	2,626,493.54	3,023,805.28
4 Date of Delivery	11-11-43	3-23-46	7-2-43	5-31-43	5-4-45	7-31-43
5 Number of Days from Date of Delivery to March 8, 1946	847	350	979	1011	308	1315
6 Daily Rate of Interest at 3% per annum on the Original Purchase Price Less Original Trade-in Allowance	192.91845	268.06940	287.83017	287.87124	251.85555	299.86843
7 Amount of Interest Credited to Owner	143,401.91	90,320.93	281,785.74	290,835.61	77,571.49	381,296.40
8 Less Interest on the Original Mortgage Indebtedness accrued up to March 8, 1946 and Unpaid	20,828.62	31,136.74	10,051.65	15,309.15	22,440.01	2,856.39
9 Net Interest Credit to Owner	122,573.29	59,184.19	271,734.08	277,526.46	55,131.48	378,439.41

[fol. 107]

NATIONAL STEELSHIP CORPORATION

EXHIBIT C
Sheet 2 of 3CREDIT TO APPLICANT FOR AMOUNT EQUAL TO INTEREST AT 3% PER CENTUM PER ANNUM
FROM DATE OF DELIVERY TO MARCH 8, 1946, PURSUANT TO SECTION 9(b)(5)

LINE	PAID-AD	PAID-POST	EASTINGS	J.E. LAFFITE	JUNE 3, 1946	ETC.
1	Original Purchase Price	53,036,211.74	2,642,706.08	32,808,824.60	32,788,336.61	3,442,788.51
2	Loss: Original Trade-in Allowance	- 0 -	- 0 -	676,000.00	- 0 -	- 0 -
3	Original Purchase Price: Loss Original Trade-in Allowance	5,036,211.74	2,450,070.78	2,132,924.50	2,786,334.61	2,442,788.51
4	Date of Delivery	8-31-42	2-27-46	9-10-43	1-11-44	11-9-45
5	Number of Days from Date of Delivery to March 8, 1946	1284	9	809	- 0 -	118
6	Daily Rate of Interest at 3% per Annum on the Original Purchase Price Less Original Trade-in Allowance	291.14360	234.93830	253.41017	- 0 -	254.23830
7	Amount of Interest Credited to Owner	375,828.57	2,116.44	156,623.24	- 0 -	27,874.00
8	Less Interest on the Original Mortgage Indebtedness accrued up to March 8, 1946 and Unpaid	723.10	1,650.13	20,369.91	- 0 -	80,800.98
9	Net Interest Credit to Owner	575,405.27	264.31	136,253.33	- 0 -	17,283.61

WATERMAN STEELSHIP CORPORATIONEXHIBIT C
Sheet 2 of 2CREDIT TO APPLICANT FOR AMOUNT EQUAL TO INTEREST AT 3% PER CENTUM PER ANNUM
FROM DATE OF DELIVERY TO MARCH 8, 1946, PULSANT TO SECTION 9(b)(5)

	WILDEET	MADEN CREEK	R. PAUL SENARS	WILCOSTA	VALERION	Y. EL	TOT. L ALL VESSELS
1 Original Purchase Price	32,641,046.21	32,419,158.53	33,045,256.66	32,660,169.32	32,991,127.82	32,619,102.38	349,562,767.02
2 Less: Original Trade-in Allowance	- 0 -	- 0 -	- 0 -	686,700.00	560,000.00	- 0 -	2,406,400.00
3 Original Purchase Price Less Orig. Trade-in Allowance	32,641,046.21	32,419,158.53	33,045,256.66	31,973,469.32	32,431,127.82	32,619,102.38	44,979,167.02
4 Date of Delivery	1-9-45	1-5-46	10-30-42	4-6-44	7-26-43	9-22-44	
5 Number of Days from Delivery up to March 8, 1946	413	62	1224	3201	965	932	
6 Daily Rate of Interest at 3% For amount of the Original Pur- chase Price Less Original Trade-in Allowance	253.25101	331.97410	292.01111	189.23679	235.12185	330.76324	
7 Amount of Interest Credited to Owner	104,592.67	14,382.59	307,421.58	132,654.99	227,431.35	133,406.03	2,960,449.19
8 Less Interest on the Original Mortgage Indebtedness accrued up to March 8, 1946 and Unpaid	8,725.87	10,576.82	11,606.34	27,409.72	9,469.64	30,210.41	874,397.04
9 Net Interest Credit to Owner	95,866.80	3,805.77	295,815.24	105,245.27	217,961.71	103,195.62	2,086,052.15

[fol. 109]

WATERMAN STEAMSHIP CORPORATIONEXHIBIT BRE-ADJUSTED TRADE-IN ALLOWANCE PURSUANT TO SECTION 9(b)(7) OF THE ACT

<u>LINE</u>	<u>Traded-in Vessels</u>	<u>ARIZPA</u>	<u>MOFESSI</u>	<u>LAFAYETTE</u>	<u>WEST KENIA</u>	<u>MOZAM</u>
1						
2	Type	Dry Cargo	Dry Cargo	Dry Cargo	Dry Cargo	
3	Official Number	219800	219408	219332	217224	
4	Year Built	1920	1920	1919	1918	
5	Deadweight Tons (DWT)	8,804	8,000	11,194	8,480	
6	Date Traded-in	8-24-43	9-25-43	8-24-43	8-26-43	
7	Original Trade-in Allowances	\$886,900.00	\$886,700.00	\$876,000.00	\$860,000.00	\$2,809,600.00
8	Readjusted Trade-in Allowances	\$79,236.00	\$104,976.44	\$52,025.00	\$376,320.00	\$12,897.44
	<u>Allocation of Trade-in Allowances</u>					
9	New Vessels	<u>AFONDERIA</u>	<u>ELCOSTA</u>	<u>JEROME LAFITTE</u>	<u>ULSIEGE</u>	
10	Allocation of Original Trade-in Allowances to each New Vessel (Exhibit C)	\$886,500.00	\$886,700.00	\$876,000.00	\$860,000.00	\$2,809,600.00
11	Ratio of Original Allowances	100%	100%	100%	100%	
12	Amount of Readjusted Trade-in Allowances applied to each New Vessel on same Basis as Original Allowances (Exhibit B)	\$79,236.00	\$104,976.44	\$52,025.00	\$376,320.00	\$12,897.44

* Statutory Ceiling applies

[fol. 110]

WATERLIN STEAMSHIP CORPORATIONEXHIBIT H

Payments Heretofore Made to Former United States
Maritime Commission on Cost of Seven War-built
Vessels under Section 112(f) of Internal Revenue
Code

<u>Names of Vessels</u>	(1) Amount of Pay- ments by Appli- cant on Account of Cost of Vessels under Section 112(f) of Internal Revenue Code Relating to in- voluntary Conversions	(2) Amount Represent. 25% of Adjusted Statutory Sales Prices	(3) Amount by which Payments under Section 112(f) of Internal Revenue Code Exceed 25% of Adjusted Stat. Sales Prices
ANDREW JACKSON	\$ 699,164.46	\$ 251,345.00	\$ 447,819.46
CITY OF ALMA	699,164.47	253,020.17	446,144.30
HASTINGS	699,164.46	246,319.50	452,844.96
KYSKA	638,291.00	261,786.80	376,504.20
MADAXET	699,164.46	248,832.25	450,332.21
MAIDEN CREEK	638,291.00	263,864.76	374,426.24
YAKA	<u>699,164.46</u>	<u>244,085.94</u>	<u>455,078.52</u>
	<u>\$4,772,404.31</u>	<u>\$1,769,254.42</u>	<u>\$3,003,149.89</u>

U.S. DEPARTMENT OF COMMERCE
Maritime Administration
Washington 25, D.C.

June 11, 1954

Waterman Steamship Corporation
19 Rector Street
New York 6, New York

Attention: Mr. J. C. O'Brien

Gentlemen:

Subject: Contract No. MCo-42281—Adjustments

In accordance with the request of your Mr. O'Brien at the meeting recently held in this office, the following constitutes the reasoning of this office in the determination that a deficiency existed as of March 8, 1946 because of the application of 112-F funds.

Section 9, Merchant Ship Sales Act of 1946, as amended, which provides for the adjustment of prior sales of vessels to citizens, sets up a system of credits to the applicant (the prior purchaser) and credits by such applicant to the Commission. I am sure you will agree a listing of the vessels credits contained in Section 9(b) of the Act is unnecessary at this point.

Section 9(b) (8) provides—"If, . . . the sum of the credits in favor of the applicant exceeds the sum of the credits [fol. 112] in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission." P. L. 269, 80th Congress, that if any party was indebted to the Government in connection with the sale, purchase or requisition of a vessel, such amount should be deducted from any amount payable by the Government to such party.

In determining the adjustment of the price of the vessels sold to Waterman Steamship Corporation, after crediting Waterman with the excess of cash payments made upon the original purchase price of the vessels over twenty-five percent of the statutory sale price, and crediting Waterman with other sums due them, it was determined that the sum of the credits in favor of Waterman Steamship Corporation equalled \$15,917,337.47. It was likewise determined that the sum of the credits due the Government was equal to \$13,000,225.28. This left a balance due Waterman of \$2,917,112.19.

Since, however, certain moneys, in the amount of \$4,772,404.31, which had previously been deposited in a fund set up by Waterman Steamship Corporation pursuant to 112-F of the Internal Revenue Code, had been in the acquisition of the ships, Waterman stated that they would pay the United States a sum sufficient to assure that these 112-F funds remain as a part of the moneys used in the acquisition of the vessels. Thus, when these funds were reduced by the amount required as down payment (25% of statutory sales price) on the ships involved, \$1,769,254.42, a balance of unapplied 112-F funds in the amount of \$3,003,149.89 remained.

[fol. 113]

—2—

June 11, 1954

Waterman Steamship Corporation

Since the Act specifically requires that the adjustment be made by a series of credits and counter-credits with the balance being either paid or credited to the Waterman, or paid to the Commission, if the 112-F funds were to remain in the vessel, it was necessary that Waterman pay the United States the sum of \$86,037.70, or the difference between the net credits of \$2,917,112.19 and the 112-F funds applied in the amount of \$3,003,149.89. The Government made the adjustment (reduction) in the amount of mortgages due on these vessels as of March 8, 1946. Since Waterman would be required to pay the United States \$86,037.70 in order that a reduction of this amount could be made in said mortgages, Waterman must, of necessity, make such cash payment as of the same date. The amount of \$86,037.70 does not arise

by reason of a credit due the Government under Section 9, Merchant Marine Act of 1936, as amended, but arises solely by reason of the Government agreeing to Waterman's request that the total amount of 112-F funds remain as a part of the purchase price of the vessels, the price of which was being adjusted.

In order that this be done, the Government would have to have in hand as of the date at which the amount of 112-F funds was credited against the mortgage, the amount due from Waterman, which made the application of the 112-F funds to the mortgage possible.

Accordingly, it would be appreciated if Mr. O'Brien is in a position to ratify the accounting adjustments and accept the necessary billings for interest on his next visit.

Very truly yours,

G. B. PROWSE

for F. E. Hickey, Chief
Division of Claims

[fol. 118] PLAINTIFF'S EXHIBIT G—PART I

2-28-61 R.G.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA,
SOUTHERN DIVISION

Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

STIPULATION OF FACTS—COUNTERCLAIMS

The parties hereby stipulate and agree as follows: that the Exhibits attached hereto are incorporated herein and made a part hereof and that such Exhibits are true and correct copies of the originals thereof; and that the facts

set forth herein and the Exhibits attached hereto may be treated as evidence in this cause, without prejudice however to the right of either party to introduce other and further proof not inconsistent with the facts herein stipulated and subject to the right of either party to object to the relevancy and materiality of any of said facts and Exhibits.

24. Attached hereto as Exhibit 24 is a copy of Contract No. MCc-40639, dated November 2, 1945, between the United States Maritime Commission and Plaintiff for the purchase of the Fairport.

25. Attached hereto as Exhibit 25 is a copy of the Preferred Mortgage dated February 27, 1946, given by Plaintiff to the United States of America on the Fairport, with attached Certificate of Registry of such vessel.

[fol. 119] 26. Attached hereto as Exhibit 26 is a copy of the Estimated Cost and Valuation Statement dated June 27, 1946, concerning the Fairport. Such Statement was prepared by the United States Maritime Commission and furnished to Plaintiff by said Commission.

27. Attached hereto as Exhibit 27 is a copy of a letter dated February 21, 1946, from Mr. Wade H. Skinner, General Counsel, United States Maritime Commission, to Mr. Edouard F. Henriques, Regional Attorney, Gulf Coast, United States Maritime Commission, concerning the sale of the Fairport to Plaintiff.

28. Attached hereto as Exhibit 28 is a copy of Contract MCc-31165, dated August 14, 1944, between the United States Maritime Commission and Plaintiff for the purchase of the Hastings.

29. Attached hereto as Exhibit 29 is a copy of the Preferred Mortgage dated November 17, 1944, given by Plaintiff to the United States of America on the Hastings, with attached Certificate of Registry of such vessel.

30. Attached hereto as Exhibit 30 is a copy of a letter dated November 9, 1944, from Mr. Francis B. Goertner,

Assistant General Counsel, United States Maritime Commission, to Mr. Edouard F. Henriques, Regional Attorney, Gulf Coast, United States Maritime Commission, concerning the sale of the Hastings to Plaintiff.

59. Attached hereto as Exhibit 59 is copy of Contract No. WSA-8884, Requisition Bareboat Charter of the Hastings, dated November 17, 1944, between Plaintiff and the War Shipping Administration.

JOHN W. McCONNELL, JR.
Attorney for Plaintiff

RALPH KENNAMER
Attorney for Defendant

STIPULATION G — EXHIBIT 24

COUNTERPART II

Contract No. MCo-40639

CONTRACT

between

UNITED STATES MARITIME COMMISSION
and

WATERMAN STEAMSHIP CORPORATION
FOR THE PURCHASE OF THE VESSEL
DESIGNATED CONTRACTOR'S HULL NO. 36
COMMISSION'S HULL NO. 1614

THIS AGREEMENT made as of the 2d day of November, 1945, between UNITED STATES MARITIME COMMISSION (herein called the "Commission") and WATERMAN STEAMSHIP CORPORATION, a corporation organized and existing under the laws of the State of Alabama (herein called the "Buyer"),

WHEREAS:

1. The Commission and Gulf Shipbuilding Corporation, an Alabama corporation (herein called the "Contractor"), [fol. 121] entered into a contract dated January 21, 1943 (herein called the "Construction Contract"), a copy of which contract is attached hereto and marked "Exhibit A", for the construction and delivery of a vessel designated Contractor's Hull No. 36 and Commission's Hull No. 1614 (now named FAIRPORT and herein called the "Vessel") in accordance with the plans and specifications referred to therein for the consideration therein set forth; and

2. Pursuant to the provisions of the Merchant Marine Act 1936, as amended, the Commission has agreed to sell the Vessel to the Buyer under the terms and conditions hereinafter set forth and has made all necessary findings in connection therewith required under the provisions of said Merchant Marine Act 1936, as amended.

NOW, THEREFORE, in consideration of the premises and mutual promises hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. *Agreement to Purchase.* Subject to the provisions hereinafter set forth, the Buyer agrees to purchase from the Commission and the Commission agrees to sell to the Buyer the vessel (named FAIRPORT and designated Contractor's Hull No. 36 and Commission's Hull No. 1614) if and when constructed by the Contractor and delivered to and accepted by the Commission in accordance with the terms of the Construction Contract (as amended from time to time), fully outfitted and equipped as provided in the Construction Contract.

ARTICLE 2. *Acceptance of the Vessel by the Buyer—Bill of Sale.* The Commission agrees to deliver and the Buyer agrees to accept delivery of the Vessel concurrently [fol. 122] with the acceptance of said Vessel by the Commission from the Contractor and its documentation under the laws of the United States. At the time of delivery of the Vessel by the Commission to the Buyer, the Commission shall execute and deliver to the Buyer a Bill of Sale, in

the usual Government form, conveying the Vessel to the Buyer with warranties of title and freedom from liens.

ARTICLE 3. *Purchase Price of Vessel.* The Buyer agrees to pay at the time and in the manner hereinafter set forth as purchase price of the Vessel the full cost to the Commission of the Vessel, including outfitting and equipping the Vessel, exclusive of the cost of national defense features, upon completion and delivery in accordance with said Construction Contract dated January 21, 1943, plus interest at the rate of 3-1/2 per centum per annum on payments made by the Commission on account of the cost of the construction of, or outfitting or equipping, the Vessel from date of such payments to date of delivery of the vessel or until date the Commission receives reimbursement therefor from the Buyer (to the extent of such reimbursement); Provided, That the purchase price shall not be increased on account of any changes in the plans and specifications of the Vessel heretofore or hereafter authorized by the Commission for the purpose of incorporating features in the Vessel which the Commission determines to be "national defense features."

It is understood and agreed between the parties hereto that the cost of any national defense features incorporated in the Vessel shall be borne by the Commission.

ARTICLE 4. *Payment of Purchase Price of Vessel.* The purchase price of the vessel, including interest as provided [fol. 123] in Article 3 hereof, shall be paid by the Buyer upon delivery of the Vessel by the Commission to the Buyer, as follows:

(a) The Buyer shall, simultaneously with the execution and delivery of this contract by the Commission to the Buyer, pay to the Commission in cash the sum of \$306,270.78 as part of the purchase price.

(b) In the event the amount to be paid in cash, including interest, by the Buyer as set forth in paragraph (a) of this Article 4 does not equal 12-1/2 per cent of the purchase price of the Vessel, as tentatively determined hereunder, then and in that event the Buyer shall pay to the Commis-

sion in cash, upon delivery of the Vessel and simultaneously with delivery of the promissory notes referred to in paragraph (c) of this Article 4, such an amount as may be necessary when added to said sum of \$306,270.78 to equal 12-1/2 per cent of the purchase price of the Vessel, plus interest as hereinbefore described.

(c) Upon delivery of the Vessel from the Commission to the Buyer, the Buyer shall give to the Commission its twenty negotiable promissory notes and a First Preferred Mortgage on the Vessel, securing said notes, in substantially the latest standard form of the Commission. Said notes shall be of equal principal amounts, shall mature one each year during the twenty years succeeding the date of delivery of the Vessel, and shall bear interest at the rate of 3-1/2 per centum per annum, payable semi-annually.

The aggregate principal amount of the notes given upon the date of delivery of the Vessel shall be equal to the unpaid balance of the purchase price required to be paid under the provisions of Article 3 hereof.

[fol. 124] In the event the actual cost of the Vessel as finally determined by the Commission, subsequent to the date of delivery of the Vessel is less than the total amount of the payments made by the Buyer under the provisions of paragraphs (a) and (b) of this Article 4 and the amount secured by the First Preferred Mortgage to be given with respect to the Vessel, there shall be an appropriate adjustment of the principal amount of the notes given by the Buyer to evidence the deferred payments of the purchase price of the Vessel, such adjustment to be made as of the date of delivery of the Vessel. In the event the actual cost of the Vessel as finally determined by the Commission under the provisions of Article 3 hereof is more than the total amount of the payments made by the Buyer under the provisions of paragraphs (a) and (b) of this Article 4 and the amount secured by the First Preferred Mortgage to be given with respect to the Vessel, the Buyer shall pay to the Commission in cash the amount of such deficiency with interest at 3-1/2 per cent per annum from date of delivery of said Vessel.

The determination by the Commission of the purchase price of the Vessel shall be final and conclusive on the parties hereto.

Said payments, both as to cost price and interest, shall be tentatively computed and paid upon the delivery of the Vessel as hereinabove provided, subject to revision and adjustment between the parties as soon as the final amount can be determined in accordance with the foregoing provisions.

ARTICLE 5. *Insurance—Insurance Companies.*

(a) The Buyer shall secure and maintain the insurance required under the provisions of the First Preferred Mortgage to be given hereunder; provided, however, that the [fol. 125] Buyer shall not be required to secure or maintain any insurance on the New Vessel other than total loss only, in the amount of not less than One Hundred Ten per centum (110%) of the principal amount of the promissory notes secured by the mortgage given on the New Vessel, with loss, if any, payable to the Commission for distribution to the United States or the Buyer as interest may appear, in the event that the Buyer shall deposit with the Commission, under a form of agreement satisfactory to the Commission, United States Government Bonds and/or other obligations, acceptable to the Commission, in principal amount not less than One Hundred Ten per centum (110%) of the principal amount of the promissory notes secured by said mortgage, said bonds and/or other obligations to constitute additional security for the due and punctual payment of said promissory notes. It is understood that the Buyer may secure and maintain any other insurance as it may determine in its own discretion and may be named as sole beneficiary in any policies so secured and maintained.

Upon payment by the Buyer of all principal and all interest due on any one or more of said promissory notes, a proper part, so nearly as may be practicable, of the bonds and/or other obligations deposited with the Commission as above provided, shall be released by the Commission and duly delivered to the Buyer.

(b) The policies of insurance required hereunder and the underwriters or underwriting funds issuing the same shall be subject to the approval of the Commission, and the Buyer agrees to keep fully paid the premiums and other charges on such insurance.

(c) The Buyer agrees that it will not do any act, nor voluntarily suffer nor permit any act to be done, whereby [fol. 126] any insurance shall or may be suspended, impaired, or defeated and will not suffer nor permit the New Vessel to engage in any voyage, nor to carry any cargo not permitted under the policies of insurance in effect, without first covering the New Vessel, to the amount herein provided for, with insurance satisfactory to the Commission for such voyage or the carriage of such cargo.

ARTICLE 6. *Changes in Plans and Specifications.* The Commission agrees that it will not, subsequent to the execution of this Agreement, authorize any changes in the plans and specifications of the Vessel (other than those involving National Defense Features) without the prior consent of the Buyer. All changes in plans and specifications (other than those involving National Defense Features) made subsequent to the execution of this Agreement shall inure to the benefit of or will be for the account of the Buyer, that is, the total amount of the increases in contract price on account of such changes shall be added to the purchase price and the total amount of decreases in contract price on account of such changes shall be deducted from the purchase price.

ARTICLE 7. *Rights upon Default by the Contractor—Loss of Vessel before Completion.* If the Contractor defaults in the construction of the Vessel, the Buyer shall have no rights against the Commission for damages which it may sustain on account of failure to deliver the Vessel or delay in the delivery. Upon the taking by the Commission (in its discretion) of the action provided in the event of default under the Construction Contract, the rights of the Buyer shall be as follows:

(a) *In the Event of Completion by the Commission:* If the Commission, acting directly or through a contractor,

proceeds with the work to the completion of the Vessel, [fol. 127] the Buyer shall purchase the Vessel on completion and shall pay therefor the purchase price determined as provided in Article 3 hereof; Provided, That there shall be no deductions from the purchase price on account of delay in completion and delivery of the Vessel, in excess of the amounts actually recovered on account of such delay by the Commission. In the event of such completion by the Commission, adjustments shall be made for deficiencies and failure to meet the guaranties in the same amounts as if the Vessel had been completed under the Construction Contract by the Contractor. Legal fees and other expenses incurred in taking possession of the Vessel and any property of the Contractor, or in the taking of any other extraordinary action made necessary by the Contractor's default and not related to construction, shall not be included in determining the purchase price of the Vessel.

(b) *If the Commission does not Complete the Vessel:* If the Commission determines not to complete the Vessel, it shall give notice to Buyer of such determination and thereafter the Buyer shall have no rights hereunder, except to the return of its installment payments as hereinafter stated, without interest. The Commission shall pay to the Buyer from the proceeds of the sale of the Vessel, so far as available after deducting expenses of the sale, and from any amounts recovered from the Contractor and its surety (and only from such sources) an amount equal to the cash payments, including interest paid by the Buyer, theretofore made by the Buyer pursuant to Article 4 hereof. The Buyer shall have no right to any payments from the Commission for reimbursement for expenses incurred by it. If, after default by the Contractor, the Commission sells the Vessel, the Buyer may become a purchaser at such sale, in which event the payments (excluding payments of interest) previously made hereunder on account of the purchase price [fol. 128] (and not repaid) may be credited on the purchase price. It is understood that the Commission may determine, in its discretion, the time and place of sale and may impose such conditions with respect thereto as it may deem advisable, including provision for completion of the Vessel.

and for her operation in a manner reasonably calculated to carry out effectively the purposes and policy of the Act.

(c) *If Vessel is Lost before Completion by Contractor:* In the event that an actual or constructive total loss of the Vessel shall occur prior to its delivery by the Contractor to the Commission and the Construction Contract shall be cancelled, as therein provided, the Buyer shall be entitled to any amounts received by the Commission, in accordance with the provisions of the Construction Contract, from the Contractor as refund of installment payments made by the Commission or as proceeds of any insurance, in excess of the amount which is then payable to the Commission under the provisions of Article 4 hereof.

ARTICLE 8. *Documentation of Vessel.* Upon its completion the Vessel shall be documented under the laws of the United States and shall remain documented under the laws of the United States so long as any mortgage, or any of the notes secured thereby, shall be outstanding.

ARTICLE 9. *Transfer of Rights to Buyer:* The Commission agrees that the Buyer shall have all the rights conferred upon the Commission by provisions of said Construction Contract relating to the Vessel which, by the terms thereof, would be operable in favor of the Commission as Owner from and after the time of completion and delivery of said Vessel by the Contractor to the Commission if the Commission remained the Owner thereof, and [fol. 129] the Commission further agrees to execute all instruments requested by the Buyer to effectuate such transfer of rights.

ARTICLE 10. *Employment of Member of Congress.* The Buyer agrees not to employ any Member of Congress either with or without compensation, as an attorney, agent, officer, or director.

ARTICLE 11. *Officials not to Benefit nor be Employed.* No member of or Delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, except as provided in Section 116 of the Act approved March 4, 1909 (35 Stats. 1109).

ARTICLE 12. *Future Legislation.* The Commission agrees that in the event of the enactment of legislation authorizing the sale by the United States of vessels, constructed or sold under conditions similar to the construction and sale of the Vessel herein agreed to be sold, at a price less than the actual construction cost thereof, exclusive of the cost of national defense features installed in any such vessel, the Buyer shall be granted the benefit of such legislation with respect to the sales price of the Vessel, in which event the Commission shall make an appropriate adjustment with the Buyer, on the purchase price of the Vessel.

IN WITNESS WHEREOF, the parties hereto have executed five original counterparts of this Agreement as of the day and year first above written.

UNITED STATES MARITIME COMMISSION

By **?????**
Secretary

[fol. 130] **ATTEST:**

?????
Assistant Secretary

WATERMAN STEAMSHIP CORPORATION

By **N. NICOLSON**
President

ATTEST:

J. A. TOWNSEND
Secretary

Approved as to form:

JOHN F. HARRELL
Assistant to General Counsel
United States Maritime Commission

STIPULATION G — EXHIBIT 25

PREFERRED MORTGAGE

WATERMAN STEAMSHIP CORPORATION

To

UNITED STATES OF AMERICA

On

SS FAIRPORT

THIS MORTGAGE, dated the 27th day of February, 1946, by and between WATERMAN STEAMSHIP CORPORATION, a corporation organized and existing under the laws of the State of Alabama (herein called the "Ship-[fol. 131] owner") and UNITED STATES OF AMERICA, represented by the UNITED STATES MARITIME COMMISSION (herein called the "Mortgagee"),

WHEREAS:

1. As of the 2d day of November, 1945, the Shipowner and the Mortgagee entered into a certain contract for the purchase by the Shipowner from the Mortgagee of the SS FAIRPORT (herein called the "Vessel") hereinafter described;

2. As part of the consideration for the sale of the Vessel, the Shipowner agreed to pay to the Mortgagee the sum of Two Million Four Hundred Fifty Thousand Seventy Dollars and Seventy-eight Cents (\$2,450,070.78) payable Three Hundred Six Thousand Two Hundred Seventy Dollars and Seventy-eight Cents (\$306,270.78) in cash on or before delivery and the balance in twenty (20) equal installments, to be evidenced by twenty (20) negotiable promissory notes of the Shipowner and to be secured by a First Preferred Mortgage on the Vessel to be given by the Shipowner to the Mortgagee in the form of this Preferred Mortgage;

3. Pursuant to the terms of said purchase agreement, the Mortgagee has simultaneously herewith conveyed to the Shipowner, by proper bill of sale, the Vessel, and the Shipowner is now the sole owner of said Vessel;

4. The Shipowner is justly indebted to the Mortgagee in the sum of Two Million One Hundred Forty-three Thousand Eight Hundred Dollars (\$2,143,800.00) upon the purchase price of the Vessel; and

[fol. 132] 5. The Shipowner, for the purpose of duly securing the payment of said indebtedness and the interest thereon, has duly authorized and directed the execution and delivery of this First Preferred Mortgage and the negotiable promissory notes given herewith and herein described to the Mortgagee;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That in consideration of the premises and of the sum of Two Dollars (\$2.00) duly paid by the Mortgagee at or before the sealing and delivery of these presents and for other valuable considerations, receipt whereof is hereby acknowledged by the Shipowner, and in order to secure payment of said principal sum of Two Million One Hundred Forty-three Thousand Eight Hundred Dollars (\$2,143,800.00) and interest thereon at the rate of three and one-half per centum (3-1/2%) per annum, payable semiannually, as evidenced by the notes hereinafter described and according to the tenor thereof, and the performance and observance of each and every one of the covenants, stipulations, and conditions set forth herein, the Shipowner has granted, bargained, sold, conveyed, transferred, assigned, remised, released, mortgaged, set over and confirmed and by these presents does grant, bargain, sell, convey, transfer, assign, remise, release, mortgage, set over and confirm unto the Mortgagee and its assigns all of the following described property, to-wit:

The whole of that certain steel Vessel FAIRPORT, Official Number 249072, of about 6165 gross tons and 3519 net tons register, which Vessel is more fully described in her Marine document, a true copy of which is hereto attached and made a part hereof, together with her engines, boilers,

machinery, masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel, furniture, and all other appurtenances [fol. 133] thereunto appertaining and belonging, and all additions, improvements and replacements hereafter made in or to the Vessel or any part or appurtenance or equipment thereof;

TO HAVE AND TO HOLD all and singular the above granted and described property unto the Mortgagee and its assigns to its and their own use, benefit and behoof forever;

PROVIDED, HOWEVER, and these presents are upon the condition that if the Shipowner, or its successors or assigns shall pay or cause to be paid to the Mortgagee or its assigns the said principal sum of Two Million One Hundred Forty-three Thousand Eight Hundred Dollars (\$2,143,800.00) and interest thereon at the rate of three and one-half per centum (3-1/2%) per annum payable semi-annually, by payment of the following described notes and interest thereon in accordance with the terms of such notes, and shall pay to the Mortgagee or assigns any and all other sums that may be owing and payable to the mortgagee or assigns hereunder, then this Mortgage and the estate and rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

Said notes are dated February 27, 1946, and are in the aggregate principal amount of Two Million One Hundred Forty-three Thousand Eight Hundred Dollars (\$2,143,800.00) and are numbered 1 to 20 inclusive; each note is for the principal sum of One Hundred Seven Thousand One Hundred Ninety Dollars (\$107,190.00) and the dates of [fol. 134] their maturity, respectively, are February 27, of the years set opposite their numbers hereinbelow:

<i>Number of Note</i>	<i>Year of Maturity</i>	<i>Number of Note</i>	<i>Year of Maturity</i>
1	1947	11	1957
2	1948	12	1958
3	1949	13	1959
4	1950	14	1960
5	1951	15	1961
6	1952	16	1962
7	1953	17	1963
8	1954	18	1964
9	1955	19	1965
10	1956	20	1966

Whenever hereinafter the word "notes" is used, that word shall be deemed to mean and include the above-mentioned notes, which are substantially in the following form, the blanks therein having been appropriately filled:

FORM OF NOTE

No.

On the day of , 19 , for value received, WATERMAN STEAMSHIP CORPORATION, a corporation duly organized and existing under the laws of the State of Alabama, promises to pay to the UNITED STATES OF AMERICA, or order, the principal sum of [fol. 135] (\$) and to pay interest on said principal sum from the date hereof at the rate of three and one-half per centum (3-1/2%) per annum, payable semiannually, on the day of and the day of in each year, first payment due , 19 , until the principal sum hereof is paid, both principal and interest to be payable at the office of the United States Maritime Commission, Washington, D.C., in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for public and private debts.

This note is one of a series of twenty (20) notes, aggregating (\$) principal amount, of like form and tenor, save for their respective numbers and dates of maturity, each of which is issued under and secured by a First Preferred Mortgage, dated , 19 , upon the American steel vessel , Official Number , to which mortgage reference is hereby made for a description of the property thereby mortgaged, the nature and extent of said security, and the rights of the respective holders of the notes in respect of said security. In case an event of default has occurred under said Mortgage, this note may, at the option of the holder, be declared and become immediately due and payable, and the holder shall have other remedies therein or by law provided, all as more fully set forth in said mortgage.

This note may be redeemed at the option of the maker on any semiannual interest date upon at least thirty (30) days' prior written notice, by payment of the principal amount hereof, together with interest thereon to date of payment.

[fol. 136] IN WITNESS WHEREOF the undersigned has caused this note to be executed by its officers thereunto duly authorized, the day of , 19

WATERMAN STEAMSHIP CORPORATION

By: _____
President

By: _____
Treasurer

ATTEST:

Secretary

The Shipowner hereby covenants and agrees to pay said balance of the purchase price of said Vessel together with interest thereon as herein and in said notes provided and at all times to keep, perform and observe all and singular the covenants, conditions, stipulations, promises and agreements in this Mortgage and in said notes expressed or implied and on its part to be kept, performed and observed and to pay all sums that may hereafter become due hereunder.

The Shipowner prior to the maturity of the notes shall have the right at its option to redeem any or all of the notes then outstanding on any semi-annual interest date upon at least thirty (30) days' prior written notice to the Mortgagee by the payment of the principal amount thereof together with accrued interest thereon to date of payment, but no such redemption shall entitle the Shipowner to a discharge of this Mortgage until all of the covenants, conditions, stipulations and agreements shall have been kept, observed and performed. In case of redemption of less [fol. 137] than all of the notes outstanding, the notes to be redeemed shall be selected by the Shipowner.

The Shipowner for itself, its successors and assigns hereby covenants and agrees with the Mortgagee and its successors and assigns that said Vessel and all the appurtenances thereunto appertaining and belonging and all replacements hereafter made in or to the same are to be held by the Mortgagee subject to the further covenants, conditions and uses hereinafter set forth; that is to say;

ARTICLE I

THE SHIPOWNER HEREBY COVENANTS AND AGREES:

Section 1. The Shipowner was duly organized and is now existing as a corporation under the laws of the State of Alabama and is now, and shall remain during the life of this Mortgage, a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, as amended, and is duly authorized to mortgage the Vessel conveyed hereby.

and that all corporate action necessary and required by law for the execution and delivery of this First Preferred Mortgage, and the good faith affidavit filed herewith, has been duly and effectively taken, and that the aforesaid notes in the hands of the holder thereof are and will be valid and enforceable obligations of the Shipowner in accordance with their terms.

Section 2. The Shipowner lawfully owns and is lawfully possessed of the Vessel free from any lien or incumbrance whatsoever, except liens in favor of the United States, and that it will warrant and defend the title and possession thereto and to every part thereof for the benefit of the Mortgagee against the claims and demands of all persons whomsoever.

[fol. 138] *Section 3.* (a) The Shipowner will, at its own expense, when and so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, insure the Vessel and keep the same insured against all such risks as the Mortgagee from time to time may require, in an amount in dollars, in money of the United States which is legal tender for the payment of public and private debts, equal to the full commercial value of the Vessel, but in no event less than 110 per cent of the amount remaining unpaid on the purchase price of the Vessel from time to time.

(b) Until otherwise required or permitted by the Mortgagee, such insurance shall be as hereinafter specified, that is to say:

(i) Such insurance shall include hull or port risk insurance, and may include such amounts of disbursements and other forms of "total loss only" insurance as are permitted by the hull or port risk insurance policies. The total amount of insurance in the hull or port risk policies for the Vessel shall equal the valuation of such Vessel stated in such policies.

(ii) While being operated, the Vessel shall always be covered by hull insurance placed under the latest form of American Institute of Marine Underwriters' policy, or under such other form of policy as the Mortgagee may approve.

(iii) When and while the Vessel is laid up, in lieu of the aforesaid hull or hulls and disbursements insurance, port risk insurance may be taken out thereon by the Shipowner under forms of port risk policies approved by the Mortgagee.

(iv) The Shipowner, at its own expense, when and so long as this mortgage, or any of the notes secured [fol. 139] hereby, shall be outstanding, will also keep the said Vessel insured against protection and indemnity risks and liabilities by policies or certificates approved by the Mortgagee as to form and amount. So long as the Shipowner is not in default hereunder, the Mortgagee shall consent that payment of losses under such insurance shall be made direct to the Shipowner to reimburse it for any loss, damage, or expense suffered or incurred by it and covered by said insurance.

(c) All insurance required hereunder shall be placed with insurance companies, underwriters' associations or underwriting funds satisfactory to the Mortgagee and shall be taken out in the name of the Waterman Steamship Corporation for account of whom it may concern, all losses shall be made payable to the United States Maritime Commission, Washington, D. C., and all insurance monies received by said Commission shall be distributed by it as follows:

(i) In the event that insurance (except the insurance required under the foregoing paragraph (b) (iv) of this Section (3) becomes payable under said policies on account of accident or event not resulting in actual or constructive total loss of said Vessel, the Mortgagee shall (a) if the Shipowner is not in default under this Mortgage, consent that the Underwriters pay direct for repairs, salvage, or other charges, or (if the Shipowner shall have first fully repaired the damage or secured complete discharge of the liability insured against) reimburse the Shipowner therefor; or (b) if the Shipowner is in default under this mortgage, apply the insurance as provided in Article II hereof.

(ii) In the event of an actual or constructive total loss of the Vessel, the Mortgagee shall retain out of insurance payments received on account of said loss, [fol. 140] which shall become the sole property of the Mortgagee, any sum or sums that shall be or become owing to the Mortgagee under this mortgage, whether or not the same be then due or payable, together with accrued interest and the cost of collecting the insurance.

(d) When and so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, all policies, binders and cover notes evidencing insurance as required hereunder shall be delivered to the United States Maritime Commission, Washington, D. C., for its approval and custody.

(e) In the event that any claim or lien is made against the Vessel for loss, damage, or expense which is covered by insurance required hereunder, and it is necessary for the Shipowner to obtain a bond or supply other security to prevent arrest of the Vessel, or to release the Vessel from arrest on account of said claim or lien, the Mortgagee, on request of the Shipowner, may at the sole option of the Mortgagee, assign to any person, firm, or corporation executing a surety or guarantee bond, or other agreement to save or release the mortgaged Vessel from such arrest, all right, title, and interest of the Mortgagee in and to said insurance covering said loss, damage, or expense as collateral security to indemnify against liability under said bond or other agreement.

(f) The Shipowner agrees to keep the premiums and other charges on all insurance required hereunder fully paid. The Mortgagee agrees to reimburse the Shipowner annually, by direct payment, in an amount equal to the premium for total loss insurance, as determined by the Mortgagee, on the Mortgagee's interest (determined as hereinbefore provided) if the Mortgagee requests that its interest be insured. All insurance shall be placed and kept with responsible underwriters in good standing or under [fol. 141] writing funds, satisfactory to the Mortgagee. Un-

less otherwise permitted by the Mortgagee in writing, all insurance required hereunder, shall in so far as it is, in the judgment of the Mortgagee, practicable and obtainable at reasonable rates, be placed with companies, association, or underwriting funds authorized to do any insurance business in a state of the United States, or the District of Columbia, and the remaining balance, if any, shall be placed with foreign companies or underwriters under policies containing in so far as practicable, among others, the following provisions:

"The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless, as between the Assured and the Assurers the place of suit hereon shall be deemed the State of New York, United States of America, and any suit hereon may be brought against this Company in any Court in the State of New York; this policy shall, with respect to validity, construction and enforcement, be governed by and subject to the laws of the State of New York. The summons and other legal processes may be served on this Company by and in behalf of the Assured by mailing a copy thereof by United States registered mail addressed to (Note: Assurer shall name in the policy two or more persons, citizens of the United States and legal residents of the State of New York), each of whom this Company hereby authorizes to accept by and in its behalf such summons and other legal processes against this Company in any Court in the State of New York. The mailing, as herein provided, of such summons or other legal process shall be deemed personal service and accepted by this Company as such, and shall be legal and binding upon this Company for all the purposes of the suit. Final judgment against this Company in any such suit shall be conclusive; and it may be enforced in other jurisdictions, including [fol. 142] Great Britain by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the assured to bring suit as provided herein shall be limited to a suit brought in its

own name and for its own account. For the purposes of suit as herein provided, the word 'Assured' includes any mortgagee under a ship mortgage and any person succeeding to the rights of any such mortgagee."

(g) The Shipowner agrees that it will not do any act, nor voluntarily suffer nor permit any act to be done, whereby any insurance shall or may be suspended, impaired, or defeated and will not suffer nor permit the Vessel to engage in any voyage, nor to carry any cargo not permitted under the policies of insurance in effect, without first covering the Vessel, to the amount herein provided for, with insurance satisfactory to the Mortgagee for such voyage or the carriage of such cargo.

Section 4. So long as this Mortgage, or any of the notes secured hereby, shall be outstanding, the Shipowner will not cause nor permit the Vessel to be operated in any manner contrary to law or contrary to any lawful rules or regulations which the UNITED STATES MARITIME COMMISSION may from time to time prescribe.

Section 5. Neither the Shipowner nor the Master of the Vessel has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon the Vessel any liens whatsoever, other than for crew's wages or salvage.

Section 6. A properly certified copy of this Mortgage shall be carried with the ship's papers on board the Vessel, and shall be exhibited, on demand, to any person having business with the Vessel, or to any representative of the [fol. 143] Mortgagee; and a notice, reading as follows, printed in plain type of such size that the paragraph or reading matter shall cover a space not less than six inches wide by nine inches high, framed, shall be placed and kept prominently in the chart room and in the Master's cabin of the Vessel:

NOTICE OF MORTGAGE

"This Vessel is covered by a Preferred Mortgage to the UNITED STATES OF AMERICA, under authority of the 'Ship Mortgage Act, 1920,' as amended, to secure payment to the UNITED STATES OF AMERICA of the unpaid purchase price of the Vessel. Under the terms of said mortgage neither WATERMAN STEAMSHIP CORPORATION, nor the Master of the Vessel has any right, power or authority to create, incur or permit to be imposed upon the Vessel any liens whatsoever other than for crew's wages or salvage."

Section 7. If a libel shall be filed against said Vessel, or if the Vessel shall be levied upon or taken into custody, or detained by any proceeding in any court or tribunal or by any Government or other authority, the Shipowner within fifteen (15) days thereafter will cause the Vessel to be released and any lien thereon, other than this Mortgage, to be discharged. In the event a libel is filed against said Vessel, or in the event said Vessel is levied upon or taken into custody or detained by any authority whatsoever, the Shipowner agrees forthwith to notify the UNITED STATES MARITIME COMMISSION thereof by telegram, confirmed by letter, at its office in Washington, D. C.

[fol. 144] *Section 8.* The Shipowner will at all times and at its own cost and expense maintain and preserve the Vessel, so far as may be practicable, in at least as good condition, working order and repair as the Vessel is in at the date of this Mortgage, ordinary wear and tear and depreciation excepted; and will keep the Vessel in such condition as will entitle her to the highest classification and rating for vessels of the same age and type in the American Bureau of Shipping, and annually will furnish to the Mortgagee a certificate by such Bureau that such classification is maintained. The Vessel shall and the Shipowner covenants that it will, at all times comply with all applicable United States laws, treaties and conventions, and rules and regulations issued thereunder, including particularly, but without limitation by this enumeration, International Con-

vention for Safety of Life at Sea, 1929, and all laws, rules and regulations administered by the United States Coast Guard, Navy Department, the Bureau of Customs, Treasury Department, and the United States Federal Communications Commission, and shall have on board as and when required thereby valid certificates showing compliance therewith. The Shipowner will make no substantial change in the structure, type or speed of the vessel nor change in her rig, without first receiving the written approval thereof by the Commission.

Section 9. The Shipowner will at all times afford the Mortgagee or its authorized representatives full and complete access to the Vessel for the purpose of inspecting the Vessel, its cargoes and papers; and, so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, the Shipowner shall permit a representative of the Mortgagee to make one round trip on one of the regular trips of the Vessel, each calendar year, for the purpose of inspecting the Vessel in full operation at sea, the time of such trip to be selected by the Mortgagee with reasonable [fol. 145] notice to the Shipowner; and the Shipowner, at its own cost, shall furnish such representative regular first class cabin accommodations and subsistence during such trip, including the time of the Vessel's stay in port or ports other than port of embarkation; and the Shipowner shall arrange that the Master of the Vessel will cooperate with such representative and render him all assistance in such inspection.

Section 10. The Shipowner will pay and discharge when due and payable from time to time, all taxes, assessments, Governmental charges, fines and penalties lawfully imposed on the Vessel.

Section 11. The Shipowner will not sell, mortgage, transfer, nor demise charter the Vessel without the written consent of the Mortgagee first had and obtained and any such written consent to any one sale, mortgage, transfer or charter shall not be construed to be a waiver of this provision in respect to any subsequent proposed sale, mortgage, transfer or charter. Any such sale, mortgage, trans-

fer or charter of the Vessel shall be subject to the provisions of this Mortgage and the lien it creates.

Section 12. The Shipowner will comply with and satisfy all the provisions of the Ship Mortgage Act, 1920, as amended, in order to establish and maintain this mortgage as a first preferred mortgage upon the Vessel and upon all renewals, improvements and replacements made in or to the same.

Section 13. So long as this Mortgage or the notes secured hereby are outstanding, the Vessel shall remain documented under the laws of the United States.

Section 14. In the event that this Mortgage, the notes, or any provisions hereof or thereof shall be deemed invalid [fol. 146] dated in whole or in part by reason of any present or future law of the United States or any decision of any authoritative court; or if the documents at any time held by the Mortgagee be deemed by the Mortgagee for any reason insufficient to carry out the true intent and spirit of this Mortgage and said notes, then, from time to time the Shipowner will execute on its own behalf, such other and further assurances and documents as in the opinion of counsel for the Mortgagee may be required more effectually to subject the Vessel to the payment of the principal sum of the mortgage debt, together with interest thereon, as in said notes and as herein provided, and the performance of the terms and provisions of the notes and this Mortgage.

ARTICLE II

Section 1. In case any one or more of the following events, herein termed "Events of Default", shall happen; that is to say, in case

(a) default shall be made in the payment of the whole or any part of the interest on any of said notes when and as the same shall become due and payable as therein and herein provided and the same shall continue for fifteen (15) days; or

(b) default shall be made in the payment of the whole or any part of the principal of any of said notes when

the same shall become due and payable, whether at maturity, by notice of redemption, or otherwise; or

(c) default shall be made in the due and punctual observance and performance of any provision of Sections 3, 4, 5, 6, 7, 12, 13 or 14 of Article I hereof; or

[fol. 147] (d) the Shipowner shall demise charter, sell, mortgage or transfer said Vessel or shall attempt to demise charter, sell, mortgage or transfer said Vessel, without the written consent of the Mortgagee; or

(e) the Vessel shall be libelled or levied upon or taken by virtue of any attachment or execution or seized by any Governmental authority, and shall not be released from such libel, levy, attachment, execution or seizure within fifteen (15) days; or.

(f) the Shipowner shall remove or attempt to remove said Vessel beyond the limits of the United States, save on voyages with the intention of returning to the United States, or shall abandon the Vessel in a foreign port; or

(g) the Shipowner shall be dissolved or adjudged a bankrupt or shall make a general assignment for the benefit of its creditors or shall lose its charter by forfeiture or otherwise, or a receiver or receivers of any kind whatsoever, whether appointed or not in Admiralty, Bankruptcy, Common Law or equity proceedings, and whether temporary or permanent, shall be appointed for the Vessel or for the property of the Shipowner; or a petition for reorganization of the Shipowner under the Bankruptcy Act shall be filed by the Shipowner, or such petition shall be filed by creditors and the same is approved by the Court; or if reorganization of the Shipowner under said Act is approved by the Court, whether proposed by a creditor, a stockholder or any other person whomssoever; or

(h) the Shipowner ceases to be a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, as amended; or

[fol. 148] (i) default shall be made by the Shipowner in the prompt and faithful performance or observance of any other covenant, condition or agreement by it to be performed and observed, contained in said notes or in this Mortgage and such default shall continue for fifteen (15) days;

then and in each and every such case the Mortgagee thereupon may

(1) declare all the principal sum and the notes then outstanding, with the interest thereon, to be due and payable immediately, and upon such declaration the same with interest to date of declaration shall become and be immediately due and payable, and thereafter shall bear interest at the rate of six per centum (6%) per annum; provided, however, that if before any sale of any of the mortgaged property all defaults shall have been remedied and removed and full performance made by the Shipowner to the satisfaction of the Mortgagee and all installments of principal and interest in arrears (including interest at six per centum (6%) after declaration as aforesaid) and the reasonable charges and expenses of the Mortgagee, its agents and attorneys, shall have been paid, then and in every such case the Mortgagee shall waive any such default by written notice to that effect to the Shipowner; but no such waiver shall extend to nor affect any subsequent or other default nor impair any rights or remedies consequent thereon;

(2) bring suit at law, in equity or in admiralty, as it may be advised, to recover judgment for any and all amounts due under said notes, or any of them, or otherwise hereunder, and collect the same out of any and all property of the Shipowner whether covered by this Mortgage or otherwise;

[fol. 149] (3) retake the Vessel without legal process wherever the same may be; and the Shipowner or other person in possession forthwith upon demand of the Mortgagee shall surrender to the Mortgagee possession of the Vessel and the Mortgagee may hold, lay-up, lease,

charter, operate, or otherwise use the Vessel for such time and upon such terms as it may deem to be for its best advantage, accounting only for the net profits, if any, arising from such use of the Vessel and charging upon all receipts from the use of the Vessel or from the sale thereof by court proceedings or pursuant to Subsection (4) next following, all costs; expenses, charges, damages, or losses by reason of such use; and if at any time the Mortgagee shall avail itself of the right herein given it to retake the Vessel and shall retake it the Mortgagee shall have the right to dock the Vessel for a reasonable time at any dock, pier or other premises of the Shipowner without charge, or to dock it at any other place at the cost and expense of the Shipowner;

(4) (in addition to any and all other rights, powers, and remedies elsewhere in this Mortgage or by law granted to and conferred upon the Mortgagee) sell the Vessel upon such terms and conditions as to the Mortgagee shall seem best calculated to promote the objects of the Merchant Marine Act, 1936, as amended, including the right to sell and dispose of the Vessel, free from any claim of or by the Shipowner, at public sale, by sealed bids or otherwise, by first publishing notice of any such sale for ten (10) consecutive days, except Sundays, in some newspaper published in the City of New York, State of New York, and in some newspaper, if any, published at the place designated for such sale, and by mailing notice of such sale to the Shipowner at its last known address, and any such sale may be [fol. 150] held at such place and at such time as the Mortgagee in such notices may have specified, or may be adjourned by the Mortgagee from time to time by announcement at the time and place appointed for such sale or for such adjourned sale, and without further notice or publication the Mortgagee may make any such sale at the time and place to which the same shall be so adjourned; and any such sale may be conducted without bringing the Vessel to the place designated for such sale and in such manner as the Mortgagee may deem to be for its best advantage, and the Mortgagee may become the purchaser at any such sale, and shall have the

right to credit on the purchase price any or all sums of money due to the Mortgagee under the said notes, or otherwise hereunder.

The Shipowner does hereby irrevocably appoint the Mortgagee and its assigns the true and lawful attorney and attorneys of the Shipowner, in its name and stead to make all necessary transfers of the Vessel, and for that purpose it or they shall execute all necessary instruments of assignment and transfer, the Shipowner hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof. Nevertheless, the Shipowner shall, if so requested by the Mortgagee, ratify and confirm such sale by executing and delivering to the purchaser of the Vessel such proper bill of sale, conveyance, instrument of transfer and releases as may be designated in such request.

The Shipowner covenants and agrees that in addition to any and all other rights, powers, and remedies elsewhere in this Mortgage granted to and conferred upon the Mortgagee, the Mortgagee in any suit to enforce any of its rights, powers, or remedies, if an event of [fol. 151] default has occurred and has not been cured, shall be entitled as a matter of right and not as a matter of discretion (i) to the appointment of a receiver or receivers of the Vessel and that any receiver so appointed shall have full rights and powers to use and operate the Vessel, and (ii) to a decree ordering and directing the sale and disposal of said Vessel, and the Mortgagee may become the purchaser at said sale, and the Mortgagee shall have the right to credit on the purchase price any and all sums of money due to the Mortgagee under the said notes, or otherwise hereunder.

Section 2. In the event that the Vessel shall be arrested or detained by a Marshal or other Officer of any court of law, equity or admiralty jurisdiction in any country or nation of the world or by any Government or other authority and shall not be released from arrest or detention within fifteen (15) days from the date of arrest or detention, the Shipowner does hereby authorize and empower the UNITED STATES MARITIME COMMISSION, or any

public officer or officers who may by law succeed said Commission, in the name of the Shipowner, or its successors or assigns, to apply for and receive possession of and to take possession of the Vessel with all the rights and powers that the Shipowner, or its successors or assigns might have, possess and exercise in any such event; and this power of attorney shall be irrevocable and may be exercised not only by the officials hereinabove named but also by an appointee or appointees of such Commission with full power of substitution to the same extent as if the said appointee or appointees had been named as one of the attorneys above-named by express designation.

The shipowner also authorizes and empowers the UNITED STATES MARITIME COMMISSION or its appointees or any of them to appear in the name of the Ship-[fol. 152] owner, its successors and assigns, in any court of any country or nation of the world where a suit is pending against the Vessel because of or on account of any alleged lien against the Vessel from which the Vessel has not been released and to take such proceedings as to them or any of them may seem proper towards the defense of such suit and the discharge of such lien, and all expenditures made or incurred by them or any of them for the purpose of such defense or discharge shall be a debt due from the Shipowner, its successors and assigns, to the UNITED STATES OF AMERICA, and shall be secured by the lien of this Mortgage in like manner and extent as if the amount and description thereof were written herein.

Section 3. Each and every power and remedy herein specifically given to the Mortgagee or otherwise in this Mortgage shall be cumulative and shall be in addition to every other power and remedy herein specifically given or now or hereafter existing at law, in equity, admiralty or by statute, and each and every power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other power or remedy. No delay or omission by the Mortgagee or by any of the holders

of the notes secured hereby in the exercise of any right or power or in the pursuance of any remedy accruing upon any default as above-defined shall impair any such right, power or remedy or be construed to be a waiver of any such event of default or to be any acquiescence therein; nor shall the acceptance by the Mortgagee of any security or of any payment of or on account of any note or notes maturing after any event of default or of any payment on account of any [fol. 153] past default be construed to be a waiver of any right to take advantage of any future event of default or of any past event of default not completely cured thereby.

Section 4. In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee, then and in every such case the Shipowner and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Mortgage, and all rights, remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken.

Section 5. The proceeds of the sale of the Vessel and the net earnings from any management, charter, or other use of the same by the Mortgagee under any powers above specified, including the proceeds of any claims for damages on account of the Vessel, and of any insurance received by the Mortgagee from the account of the Vessel while exercising any such power shall be applied as follows:

First: To the payment of all expenses and charges including the expenses of any sale, the expenses of any retaking, attorneys' fees, court costs, and any other expenses or advances made or incurred by the Mortgagee in the protection of its rights or the pursuance of its remedies hereunder, and to provide adequate indemnity against liens claiming priority over or equality with this Mortgage;

Second: To the payment of all sums and notes secured hereby, and of all damages liquidated or otherwise, hereunder, together with interest thereon;

[fol. 154] *Third*: To the payment of any surplus thereafter remaining to the Shipowner or to whomsoever may be entitled thereto.

In the event that the proceeds are insufficient to pay the amounts specified in paragraphs "First" and "Second" above, the Mortgagee shall be entitled to collect the balance from the Shipowner, or any other person liable therefor.

Section 6. If the Shipowner shall make default in the observance or performance of any of the covenants, conditions or agreements in this Mortgage on its part to be performed or observed, the Mortgagee may in its discretion do all acts and make all expenditures necessary to remedy such default, including, without limitation of the foregoing, entry upon the Vessel to make repairs, and the Shipowner shall promptly reimburse the Mortgagee, with interest at the rate of six per centum (6%) per annum, for any and all expenditures so made or incurred and until the Shipowner has so reimbursed the Mortgagee for such expenditures the amount thereof shall be a debt due from the Shipowner to the Mortgagee and payment thereof shall be secured by the lien of this mortgage in like manner and extent as if the amount and description thereof were written herein; but the Mortgagee though privileged so to do shall be under no obligation to the Shipowner to make any such expenditures nor shall the making thereof relieve the Shipowner of any default in that respect. The Shipowner shall also reimburse the Mortgagee promptly with interest at the rate of six per centum (6%) per annum for any and all advances made or incurred by the Mortgagee at any time in retaking the Vessel or otherwise protecting its rights hereunder, and for any and all damages sustained by the Mortgagee from or by reason of any default or defaults of the Shipowner.

[fol. 155]

ARTICLE III

In case the Shipowner permits the Vessel by voluntary act or voluntary omission to become a Vessel not documented under the laws of the United States, the Shipowner shall pay to the Mortgagee an amount equal to the difference between the interest in fact paid or which may be payable

on account of the Vessel, computed at the rate prescribed in this Mortgage, and the amount such interest would have been in the case of the Vessel if it had been computed at seven per centum (7%) per annum from the date of this Mortgage.

ARTICLE IV

Until some one or more of the events of default hereinbefore described shall happen, the Shipowner shall be suffered and permitted to retain actual possession and use of the Vessel.

ARTICLE V

Section 1. This Mortgage may be executed simultaneously in any number of counterparts and all such counterparts executed and delivered each as an original shall constitute but one and the same instrument.

Section 2. All the covenants, promises, stipulations and agreements of the Shipowner in this Mortgage contained shall bind the Shipowner and its successors and assigns and shall inure to the benefit of the Mortgagee and its assigns, and all the covenants, promises, stipulations and agreements of the Mortgagee shall bind the Mortgagee and its assigns and shall inure to the benefit of the Shipowner and its successors and assigns, whether so expressed or not.

Section 3. Wherever and whenever herein any right, power, or authority is granted or given to the UNITED [fol. 156] STATES OF AMERICA whether named as Mortgagee or otherwise, such right, power and authority may be exercised in all cases by the UNITED STATES MARITIME COMMISSION or such agent or agents as it may appoint, and the act or acts of such agent or agents when taken shall constitute the act of the Mortgagee hereunder.

ARTICLE VI

For purpose of endorsement of this Preferred Mortgage on the document of the Vessel as required by law (Section D of Ship Mortgage Act, 1920, as amended), the total amount is Two Million One Hundred Forty-three Thousand

Eight Hundred Dollars (\$2,143,800.00) and interest and performance of mortgage covenants, the date of maturity is February 27, 1966, and the discharge amount is the same as the total amount.

IN WITNESS WHEREOF, the Shipowner has executed this Mortgage the day and year first above written.

WATERMAN STEAMSHIP CORPORATION

By: N. NICOLSON
President

(CORPORATE SEAL)

ATTEST:

J. A. TOWNSEND
Secretary

By: H. C. SLATON
Treasurer

APPROVED:

? ? ? ? ?

W. R. FITCH

General Counsel
U. S. Maritime Commission

[fol. 157] ACKNOWLEDGMENT

STATE OF ALABAMA,
COUNTY OF MOBILE, ss.:

I, Mary B. Langsdale, a Notary Public in and for said county and state, do hereby certify that N. Nicolson, whose name as President of the WATERMAN STEAMSHIP CORPORATION, a corporation duly organized and existing under the laws of the State of Alabama, is signed to the foregoing Preferred Mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of the Preferred Mortgage, he as such officer

and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand this the 27th day of February, 1946.

MARY B. LANGSDALE
Notary Public

(SEAL)

My Commission Expires:
4/19/47

AFFIDAVIT

STATE OF ALABAMA,
COUNTY OF MOBILE, SS.:

N. Nicolson being duly sworn, deposes and says that he is President of WATERMAN STEAMSHIP CORPORATION [fol. 158], the corporation described in and which executed the above and foregoing mortgage; that said mortgage is made by said WATERMAN STEAMSHIP CORPORATION in good faith and without any design to hinder, delay or defraud any existing or future creditor of the said WATERMAN STEAMSHIP CORPORATION, or any lienor of the mortgaged vessel; and that this affidavit is made pursuant to an order of the Board of Directors of said WATERMAN STEAMSHIP CORPORATION.

N. NICOLSON

(SEAL).

Subscribed and sworn to before me
this 27th day of February, 1946.

MARY B. LANGSDALE
Notary Public.
Notary Public, Mobile County
My Commission Expires 4/19/47

[fol. 159]

Form No. 4297-A
May 1939
Cat. No. M. C. 1-1939

OWNER OR MORTGAGEE OF VESSEL
(Section 46, Shipping Act, 1916, as amended)
U. S. C., Title 46, Sec. 800, 40 Stat. 902
UNITED STATES MARITIME COMMISSION

OATH OF OFFICER OF INCORPORATED COMPANY*

I, J. A. Townsend, of Mobile, Alabama,
swear or affirm that I am Secretary of the Walden Steamship Corporation
a corporation organized under the laws of the State of Alabama
with offices at: Mobile, Alabama; that said corporation is the owner (or)
mortgagee of the vessel called Walden
of Mobile, Alabama, official number 24000, gross 2400
net 2400, built in 19 28, at Mobile, Alabama,
as appears by the certificate of the U.S. Maritime Commission, Mobile, Alabama,
Walden, 19 28, surrendered and Thomas E. Townsend, Acting Administrator
(Give name of surrenderer)
that I am a citizen of the United States of America by birth, having been born at Mobile,
Alabama, (State) on October 19th, 1900, (Date of Birth) (City)

Form No. 4297-A
May 1939
Cat. No. M. C. 1-1939

(Explanatory clause prescribed by United States Maritime Commission for execution and attachment as said when desired by party making oath on behalf of corporate owner or mortgagee of vessel as form (No. 4297) prescribed by United States Maritime Commission pursuant to section 43 of the Shipping Act, 1916, as amended)

The basis for the statements of facts above recited with respect to the stock ownership and control of voting power of the company, is as follows: (1) The stock books of the company show that on February 27, 1946, 90 per centum of the outstanding stock of the company was owned of record by persons whose addresses on the stock books of the company are in the United States; (2) I know of no substantial change in such percentage since that date; and (3) investigation has failed to disclose the existence of facts or relationships with respect to voting power and control contrary to those above recited.

* This date must be within 30 days of date of oath.

* The exact figure as disclosed by the stock books of the company must be given and the per centum figure must be not less than 50 per centum.

U. S. GOVERNMENT PRINTING OFFICE 16-21555

ON February 27, 1946, (Date) at Mobile, Alabama, (District, county, or State)

Subscribed and sworn to before me* this 27 day of February, 19 46.

[Signature]
[Signature]

* This oath is to be taken whenever any bill of sale, mortgage, hypothecation, or endorsement, or assignment, or transfer, or interest therein, is presented by a corporation to any collector of customs for recording.

1. Insert "President," "Secretary," or "Treasurer," as the case may be.

2. Insert full corporate name of company.

3. Insert business address of corporation.

4. Strike out word or expression not appropriate.

5. Insert date when or expression used because entitled to American registry, when appropriate.

6. U. S. document now surrendered, or document last surrendered heretofore (U. S. C., Title 46, Sec. 800).

7. Strike out reference to naturalization if member is native-born citizen.

8. A notary or other person duly qualified and authorized by law to administer oaths.

U. S. GOVERNMENT PRINTING OFFICE 16-21555

A TRUE COPY OF THE LATEST CERTIFICATE OF REGISTRY

Master "Permitted" or "Temporary"
Register No. <u>211</u>

United States of America
DEPARTMENT OF COMMERCE
BUREAU OF MARINE INSPECTION
AND NAVIGATION

OFFICIAL NO.	EXAMINED AND SIGNED BY
<u>211</u>	<u>211</u>

Master William A. Smith, Alabama, 1908
Built at Mobile
Registered 1

Builder James Smith
Number of Crew, including Master 20
Gross Tonnage 2,111 Net Tonnage 1,500
Displacement 2,111 Cubic Feet

75 per centum of the interest in the corporation owning the vessel is owned by citizens of the United States as required by law. It may be owned in part by citizens of the United States as required by law. It may be owned in part by citizens of the United States as required by law. It may be owned in part by citizens of the United States as required by law.

Certificate of Registry

No. 2,111 Gross Tonnage
No. 2,111 Net Tonnage

Chapter One, Title XLVIII, "Regulation of Commerce and Navigation," United States of the United States.

James A. Smith, of Mobile, Alabama, 1908, as Captain, having taken and subscribed the oath required by law, and having sworn that

James A. Smith, of Mobile, Alabama, 1908, as Captain, having taken and subscribed the oath required by law, and having sworn that

of the vessel called the James A. Smith, the only owner whereof James A. Smith is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1908, at Mobile, Alabama, as appears by the Certificate of the Chief of Building, of Mobile, Alabama, and James A. Smith, Acting Administrator, having certified that the said vessel is James A. Smith, of Mobile, Alabama, and is a citizen of the United States; that she has register length is 211 feet, her register breadth 21 feet, her register depth 21 feet, her height 21 feet; that she measures as follows:

Capacity under tonnage deck	Tons	Cubic Feet
Capacity between decks above tonnage deck	2,111	21,111
Capacity of hold on the upper deck, viz: Forecastle, bridge, poop, lower, chart house, mast, sails, main hatchways, light and air	2,111	21,111
Decks under Section 4142, Revised Statute, as amended:		
Crew space, Master's cabin, Running gear, Anchor gear, Chart house, Donkey engine and boiler, Stowage of sails, Propelling power (actual space), Total Displacement	2,111	21,111
Deck space, Mast, Sails, Main hatchways, Light and air, Donkey engine and boiler, Stowage of sails, Propelling power (actual space), Total Displacement	2,111	21,111

and the said James A. Smith having agreed to the description and measurement above specified, according to law, said vessel has been duly Registered at this Port.

Given under my hand and seal, at the Port of Mobile, Alabama, this 21 day of February, in the year one thousand nine hundred and 1908

James A. Smith, Collector.

SEAL OF THE
DEPARTMENT OF
COMMERCE

(s) James A. Smith
Collector of Customs

PLACE FOR SEAL
OF
COLLECTOR

James A. Smith, Collector of Customs.

[fol. 161]

STIPULATION G

EXHIBIT 26

ESTIMATED COST AND VALUATION STATEMENT

FAIRPORT

MC Hull 1614

BLDR. Hull 36

Builder:	Purchaser
Gulf Shipbuilding Company	Waterman Steamship Corp.

MCc-13634 dated 1-21-43	MCc-40639 dated 7-12-45
-------------------------	-------------------------

Estimated Construction Cost by Shipbuilder	\$2,452,990.34
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Less National Defense Features	70,000.00
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2,382,990.34

Stores (Medicine)	400.00
-------------------	--------

2,283,390.34

Outfitting & Equipment	—0—
------------------------	-----

Launching & Delivery Fees (See Commission Action dated 11-3-43)	—0—
--	-----

Add:

Interest on Progress Payments made to Ship- builder @ 3-1/2% per annum to February 27 1946	66,680.44
--	-----------

2,450,070.78

114

Estimated Cost
to Purchaser\$2,450,070.78

Less Cash down
Payment

12-1/2% 306,258.85 306,258.85

2,143,811.93

[fol. 162]

20 Notes at

\$107,190.00 2,143,800.00 11.93

Total cash Payment\$ 306,270.78

Mortgage 2,143,800.00

\$2,450,070.78 \$2,450,070.78

Daily Interest Rate \$173.68740

Estimated Cost to

Purchaser\$2,450,070.78

Deduct Mortgage .. 2,143,800.00

Cash Balance Due

on Delivery\$ 306,270.78

Construction Audit Section

Ship Sales Unit

6-27-46

STIPULATION G

EXHIBIT 27

25, D.C.

February 21, 1946

Edouard F. Henriques, Esquire
Regional Attorney
U.S. Maritime Commission
348 Baronne Street
New Orleans 12, Louisiana

Dear Mr. Henriques:

Re: SS FAIRPORT (249072)—Sale under Mortgage to
Waterman Steamship Corporation:

I send you herewith bill of sale in duplicate, one counterpart of preferred mortgage, and form of note for use in [fol. 163] closing the sale of the SS FAIRPORT under mortgage to Waterman Steamship Corporation, which is now scheduled for closing at Mobile February 27, 1946.

I am sending direct to Waterman Steamship Corporation at Mobile six counterparts of the preferred mortgage form and the twenty notes. In this connection you and the Buyer should make certain that inasmuch as the mortgage and notes are dated February 27, 1946 (at the Buyer's express request), they should not be acknowledged prior to that date.

As stated on the first page of the mortgage, the purchase price of the SS FAIRPORT to the Buyer on February 27, 1946, is \$2,450,070.78, payable on or before the day of closing in the sum of \$306,270.78 and the balance as provided in the mortgage and notes. Should the closing be delayed, however, there should be collected for each day of delay after February 27 the sum of \$173.68740.

It is my understanding that this vessel is to be requisitioned by the War Shipping Administration on a bareboat basis simultaneously with delivery to the Buyer, so that the Buyer will not be required to place any insurance to meet the mortgage requirements.

As stated in the mortgage, the agreement for the sale of this vessel is dated as of the 2d day of November, 1945.

116

Edouard F. Henriques, Esquire—2/21/46—2

[fol. 164] I am sending a copy of this letter to the Buyer and to the Collector of Customs at Mobile for their information.

Very truly yours,

"Signed" WADE H. SKINNER
Wade H. Skinner
General Counsel

Enclosures

WRFitch/amb

cc: Waterman SS Corporation
Merchants National Bank Bldg., Mobile, Ala.

Attn: Mr. H. C. Slaton, Vice President

Collector of Customs, Mobile, Alabama

Director of Insurance

P. S. Since preparing for foregoing, I have been advised that War Shipping Administration will not requisition the use of this vessel at the time of delivery. It will therefore be necessary for the Buyer to obtain commercial insurance on this vessel as required by the mortgage to the satisfaction of our Insurance Division, effective on delivery. This should be done prior to the time of passing of title to the Buyer. You should, therefore, receive advices from this office or the Insurance Division of the Maritime Commission that this has been done prior to the delivery of the bill of sale.

[fol. 165] STIPULATION G — EXHIBIT 28

COUNTERPART IV

Contract No. MCc-31165.

CONTRACT

between

UNITED STATES MARITIME COMMISSION

and

WATERMAN STEAMSHIP CORPORATION
FOR THE PURCHASE OF THE VESSEL
DESIGNATED CONTRACTOR'S HULL No. 28
— COMMISSION'S HULL NO. 1606

THIS AGREEMENT made as of the 14th day of August, 1944, between UNITED STATES MARITIME COMMISSION (herein called the "Commission") and WATERMAN STEAMSHIP CORPORATION, a corporation organized and existing under the laws of the State of Alabama, (herein called the "Buyer"),

WHEREAS:

1. The Commission and Gulf Shipbuilding Corporation, an Alabama corporation (herein called the "Contractor"), entered into a contract dated January 21, 1943 (herein called the "Construction Contract"), a copy of which contract is attached hereto and marked "Exhibit A", for the construction and delivery of a vessel designated Contractor's Hull No. 28 and Commission's Hull No. 1606, now named HASTINGS and herein called the "Vessel") in accordance with the plans and specifications referred to therein for the consideration therein set forth; and

[fol. 166] 2. Pursuant to the provisions of the Merchant Marine Act 1936, as amended, the Commission has agreed to sell the Vessel to the Buyer under the terms and conditions hereinafter set forth and has made all necessary findings in connection therewith required under the provisions of said Merchant Marine Act of 1936, as amended.

NOW, THEREFORE, in consideration of the premises and mutual promises hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. *Agreement to Purchase.* Subject to the provisions hereinafter set forth, the Buyer agrees to purchase from the Commission and the Commission agrees to sell to the Buyer the Vessel (named HASTINGS and designated Contractor's Hull No. 28 and Commission's Hull No. 1606) if and when constructed by the Contractor and delivered to and accepted by the Commission in accordance with the terms of the Construction Contract (as amended from time to time), fully outfitted and equipped as provided in the Construction Contract.

ARTICLE 2. *Acceptance of the Vessel by the Buyer—Bill of Sale.* The Commission agrees to deliver and the Buyer agrees to accept delivery of the Vessel concurrently with the acceptance of said Vessel by the Commission from the Contractor and its documentation under the laws of the United States. At the time of delivery of the Vessel by the Commission to the Buyer, the Commission shall execute and deliver to the Buyer a Bill of Sale, in the usual Government form, conveying the Vessel to the Buyer with warranties of title and freedom from liens.

ARTICLE 3. *Purchase Price of Vessel.* The Buyer agrees to pay at the times and in the manner hereinafter set [fol. 167] forth as purchase price of the Vessel the full cost to the Commission of the Vessel, including outfitting and equipping the Vessel, exclusive of the cost of national defense features, upon completion and delivery in accordance with said Construction Contract dated January 21, 1943, plus interest at the rate of $3\frac{1}{2}$ per centum per annum on payments made by the Commission on account of the cost of the construction of, or outfitting or equipping, the Vessel from date of such payments to date of delivery of the vessel or until date the Commission receives reimbursement therefor from the Buyer (to the extent of such reimbursement); Provided, That the purchase price shall not be increased on account of any changes in the plans and specifications of the Vessel heretofore or hereafter authorized by the Commission for the purpose of incorporating features in the Vessel

which the Commission determines to be "national defense features."

It is understood and agreed between the parties hereto that the cost of any national defense features incorporated in the Vessel shall be borne by the Commission.

ARTICLE 4. *Payment of Purchase Price of Vessel.* The purchase price of the vessel, including interest as provided in Article 3 hereof, shall be paid by the Buyer upon delivery of the Vessel by the Commission to the Buyer, as follows:

(a) The Buyer shall, simultaneously with the execution and delivery of this contract by the Commission to the Buyer, pay to the Commission in cash the sum of \$325,000 as part of the purchase price of the Vessel, plus interest as provided in Article 3 hereof.

(b) In the event the amount to be paid in cash, including interest, by the Buyer as set forth in paragraph (a) of this [fol. 168] Article 4 does not equal $12\frac{1}{2}$ per cent of the purchase price of the Vessel, as tentatively determined hereunder, then and in that event the Buyer shall pay to the Commission in cash, upon delivery of the Vessel and simultaneously with delivery of the promissory notes referred to in paragraph (c) of this Article 4, such an amount as may be necessary when added to said sum of \$325,000 to equal $12\frac{1}{2}$ per cent of the purchase price of the Vessel, plus interest as hereinbefore described.

(c) Upon delivery of the Vessel from the Commission to the Buyer, the Buyer shall give to the Commission its twenty negotiable promissory notes and a First Preferred Mortgage on the Vessel, securing said notes, in substantially the latest standard form of the Commission. Said notes shall be of equal principal amounts, shall mature one each year during the twenty years succeeding the date of delivery of the Vessel, and shall bear interest at the rate of $3\frac{1}{2}$ per centum per annum, payable semi-annually.

The aggregate principal amount of the notes given upon the date of delivery of the Vessel shall be equal to the unpaid balance of the purchase price required to be paid under the provisions of Article 3 hereof.

In the event the actual cost of the Vessel as finally determined by the Commission subsequent to the date of delivery of the Vessel is less than the total amount of the payments made by the Buyer under the provisions of paragraphs (a) and (b) of this Article 4 and the amount secured by the First Preferred Mortgage to be given with respect to the Vessel, there shall be an appropriate adjustment of the principal amount of the notes given by the Buyer to evidence the deferred payments of the purchase price of the [fol. 169] Vessel, such adjustment to be made as of the date of delivery of the Vessel. In the event the actual cost of the Vessel as finally determined by the Commission under the provisions of Article 3 hereof is more than the total amount of the payments made by the Buyer under the provisions of paragraphs (a) and (b) of this Article 4 and the amount secured by the First Preferred Mortgage to be given with respect to the Vessel, the Buyer shall pay to the Commission in cash the amount of such deficiency with interest at 3½ per cent per annum from date of delivery of said Vessel.

The determination by the Commission of the purchase price of the Vessel shall be final and conclusive on the parties hereto.

Said payments, both as to cost price and interest, shall be tentatively computed and paid upon the delivery of the Vessel as hereinabove provided, subject to revision and adjustment between the parties as soon as the final amount can be determined in accordance with the foregoing provisions.

ARTICLE 5. *Insurance—Insurance Companies.*

(a) The Buyer shall secure and maintain the insurance required under the provisions of the First Preferred Mortgage to be given hereunder; provided, however, that the Buyer shall not be required to secure or maintain any insurance on the New Vessel other than total loss only, in the amount of not less than One Hundred Ten per centum (110%) of the principal amount of the promissory notes secured by the mortgage given on the New Vessel, with loss, if any, payable to the Commission for distribution to the United States or the Buyer as interest may appear, in the event that the Buyer shall deposit with the Commission, under a form of agreement satisfactory to the Commission,

[fol. 170] United States Government Bonds and/or other obligations, acceptable to the Commission, in principal amount not less than One Hundred Ten per centum (110%) of the principal amount of the promissory notes secured by said mortgage, said bonds and/or other obligations to constitute additional security for the due and punctual payment of said promissory notes. It is understood that the Buyer may secure and maintain any other insurance as it may determine in its own discretion and may be named as sole beneficiary in any policies so secured and maintained.

Upon payment by the Buyer of all principal and all interest due on any one or more of said promissory notes, a proper part, so nearly as may be practicable, of the bonds and/or other obligations deposited with the Commission as above provided, shall be released by the Commission and duly delivered to the Buyer.

(b) The policies of insurance required hereunder and the underwriters or underwriting funds issuing the same shall be subject to the approval of the Commission, and the Buyer agrees to keep fully paid the premiums and other charges on such insurance.

(c) The Buyer agrees that it will not do any act, nor voluntarily suffer nor permit any act to be done, whereby any insurance shall or may be suspected, impaired, or defeated and will not suffer nor permit the New Vessel to engage in any voyage, nor to carry any cargo not permitted under the policies of insurance in effect, without first covering the New Vessel, to the amount herein provided for, with insurance satisfactory to the Commission for such voyage or the carriage of such cargo.

[fol. 171] **ARTICLE 6.** *Changes in Plans and Specifications.* The Commission agrees that it will not, subsequent to the execution of this Agreement, authorize any changes in the plans and specifications of the Vessel (other than those involving National Defense Features) without the prior consent of the Buyer. All changes in plans and specifications (other than those involving National Defense Features) made subsequent to the execution of this Agreement shall inure to the benefit of or will be for the account of the Buyer, that is, the total amount of the increases in contract

price on account of such changes shall be added to the purchase price and the total amount of decreases in contract price on account of such changes shall be deducted from the purchase price.

ARTICLE 7. *Rights upon Default by the Contractor—Loss of Vessel before Completion.* If the Contractor defaults in the construction of the Vessel, the Buyer shall have no rights against the Commission for damages which it may sustain on account of failure to deliver the Vessel or delay in the delivery. Upon the taking by the Commission (in its discretion) of the action provided in the event of default under the Construction Contract, the rights of the Buyer shall be as follows:

(a) *In the Event of Completion by the Commission:* If the Commission, acting directly or through a contractor, proceeds with the work to the completion of the Vessel, the Buyer shall purchase the Vessel on completion and shall pay therefor the purchase price determined as provided in Article 3 hereof; Provided, That there shall be no deductions from the purchase price on account of delay in completion and delivery of the Vessel, in excess of the amounts actually recovered on account of such delay by the Commission. In the event of such completion by the Commission, adjustments shall be made for deficiencies and failure to [fol. 172] meet the guaranties in the same amounts as if the Vessel had been completed under the Construction Contract by the Contractor. Legal fees and other expenses incurred in taking possession of the Vessel and any property of the Contractor, or in the taking of any other extraordinary action made necessary by the Contractor's default and not related to construction, shall not be included in determining the purchase price of the Vessel.

(b) *If the Commission does not Complete the Vessel:* If the Commission determines not to complete the Vessel, it shall give notice to Buyer of such determination and thereafter the Buyer shall have no rights hereunder, except to the return of its installment payments as hereinafter stated, without interest. The Commission shall pay to the Buyer from the proceeds of the sale of the Vessel, so far as available after deducting expenses of the sale, and from any

amounts recovered from the Contractor and its surety (and only from such sources) an amount equal to the cash payments, including interest paid by the Buyer, theretofore made by the Buyer pursuant to Article 4 hereof. The Buyer shall have no right to any payments from the Commission for reimbursement for expenses incurred by it. If, after default by the Contractor, the Commission sells the Vessel, the Buyer may become a purchaser at such sale, in which event the payments (excluding payments of interest) previously made hereunder on account of the purchase price (and not repaid) may be credited on the purchase price. It is understood that the Commission may determine in its discretion, the time and place of sale and may impose such conditions with respect thereto as it may deem advisable, including provision for completion of the Vessel and for her operation in a manner reasonably calculated to carry out effectively the purposes and policy of the Act.

[fol. 173] (c) *If Vessel is Lost before Completion by Contractor:* In the event that an actual or constructive total loss of the Vessel shall occur prior to its delivery by the Contractor to the Commission and the Construction Contract shall be cancelled as therein provided, the Buyer shall be entitled to any amounts received by the Commission, in accordance with the provisions of the Construction Contract, from the Contractor as refund of installment payments made by the Commission or as proceeds of any insurance, in excess of the amount which is then payable to the Commission under the provisions of Article 4 hereof.

ARTICLE 8. *Documentation of Vessel.* Upon its completion the Vessel shall be documented under the laws of the United States and shall remain documented under the laws of the United States so long as any mortgage, or any of the notes secured thereby, shall be outstanding.

ARTICLE 9. *Transfer of Rights to Buyer:* The Commission agrees that the Buyer shall have all the rights conferred upon the Commission by provisions of said Construction Contract relating to the Vessel which, by the terms thereof, would be operable in favor of the Commission as Owner from and after the time of completion and delivery of said Vessel by the Contractor to the Commission if the

Commission remained the Owner thereof, and the Commission further agrees to execute all instruments requested by the Buyer to effectuate such transfer of rights.

ARTICLE 10. *Employment of Member of Congress.* The Buyer agrees not to employ any Member of Congress either with or without compensation, as an attorney, agent, officer or director.

[fol. 174] ARTICLE 11. *Officials not to Benefit nor be Employed.* No member of or Delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, except as provided in Section 116 of the Act approved March 4, 1909 (35 Stats. 1109).

ARTICLE 12. *Future Legislation.* The Commission agrees that in the event of the enactment of legislation authorizing the sale by the United States of vessels, constructed or sold under conditions similar to the construction and sale of the Vessel herein agreed to be sold, at a price less than the actual construction cost thereof, exclusive of the cost of national defense features installed in any such vessel, the Buyer shall be granted the benefit of such legislation with respect to the sales price of the Vessel, in which event the Commission shall make an appropriate adjustment with the Buyer on the purchase price of the Vessel.

IN WITNESS WHEREOF, the parties hereto, have executed five original counterparts of this Agreement as of the day and year first above written.

UNITED STATES MARITIME COMMISSION

By G. S. LAND
Chairman

(SEAL)

ATTEST:
JOHN R. TANKARD
Acting Assistant Secretary

[fol. 175]

WATERMAN STEAMSHIP CORPORATION

By **E. A. ROBERTS**
President

(CORPORATE SEAL)

ATTEST:

J. A. TOWNSEND
Secretary

Approved as to form:

!!!!!!

General Counsel
United States Maritime Commission

STIPULATION G

EXHIBIT 29

**PREFERRED MORTGAGE
WATERMAN STEAMSHIP CORPORATION**

To

UNITED STATES OF AMERICA

On

SS HASTINGS

THIS MORTGAGE, dated the 17th day of November, 1944, by and between **WATERMAN STEAMSHIP CORPORATION**, a corporation organized and existing under the laws of the State of Alabama (herein called the "Shipowner") and **UNITED STATES OF AMERICA**, repre-
[fol. 176] sented by the **UNITED STATES MARITIME COMMISSION** (herein called the "Mortgagee").

WHEREAS:

1. As of the 14th day of August, 1944, the Shipowner and the Mortgagee entered into a certain contract for the pur-

chase by the Shipowner from the Mortgagee of the SS HASTINGS (herein called the "Vessel") hereinafter described;

2. As part of the consideration for the sale of the Vessel, the Shipowner agreed to pay to the Mortgagee the sum of Two Million Six Hundred Forty-Two Thousand Seven Hundred Six Dollars and Three Cents (\$2,642,706.03) payable Three Hundred Fifty-five Thousand Seven Hundred Six Dollars and Three Cents (\$355,706.03) in cash on or before delivery and the balance in twenty (20) equal installments, to be evidenced by twenty (20) negotiable promissory notes of the Shipowner and to be secured by a First Preferred Mortgage on the Vessel to be given by the Shipowner to the Mortgagee in the form of this Preferred Mortgage;

3. Pursuant to the terms of said purchase agreement, the Mortgagee has simultaneously herewith conveyed to the Shipowner, by proper bill of sale, the Vessel, and the Shipowner is now the sole owner of said Vessel;

4. The Shipowner is justly indebted to the Mortgagee in the sum of Two Million Two Hundred Eighty-seven Thousand Dollars (\$2,287,000.00) upon the purchase price of the Vessel; and

5. The Shipowner, for the purpose of duly securing the payment of said indebtedness and the interest thereon, has [fol. 177] duly authorized and directed the execution and delivery of this First Preferred Mortgage and the negotiable promissory notes given herewith and herein described to the Mortgagee;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That in consideration of the premises and of the sum of Two Dollars (\$2.00) duly paid by the Mortgagee at or before the sealing and delivery of these premises and for other valuable considerations, receipt whereof is hereby acknowledged by the Shipowner, and in order to secure payment of said principal sum of Two Million Two Hundred Eighty-seven Thousand Dollars (\$2,287,000.00) and interest thereon at the rate of three and one-half per centum (3½%) per

annum, payable semiannually, as evidenced by the notes hereinafter described and according to the tenor thereof, and the performance and observance of each and every one of the covenants, stipulations, and conditions set forth herein, the Shipowner has granted, bargained, sold, conveyed, transferred, assigned, remised, released, mortgaged, set over and confirmed and by these presents does grant, bargain, sell, convey, transfer, assign, remise, release, mortgage, set over and confirm unto the Mortgagee and its assigns all of the following described property, to-wit:

The whole of that certain steel Vessel HASTINGS, Official Number 246617, of about 6165 gross tons and 3519 net tons register, which Vessel is more fully described in her Marine document, a true copy of which is hereto attached and made a part hereof, together with her engines, boilers, machinery, masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel, furniture, and all other appurtenances thereunto appertaining and belonging; and all additions, [fol. 178] improvements and replacements hereafter made in or to the Vessel or any part or appurtenance or equipment thereof;

TO HAVE-AND TO HOLD all and singular the above granted and described property unto the Mortgagee and its assigns to its and their own use, benefit and behoof forever;

PROVIDED, HOWEVER, and these presents are upon the condition that if the Shipowner, or its successors or assigns shall pay or cause to be paid to the Mortgagee or its assigns the said principal sum of Two Million Two Hundred Eighty-seven Thousand Dollars (\$2,287,000.00) and interest thereon at the rate of three and one-half per centum (3½%) per annum, payable semiannually, by payment of the following described notes and interest thereon in accordance with the terms of such notes, and shall pay to the Mortgagee or assigns any and all other sums that may be owing and payable to the Mortgagee or assigns hereunder, then this mortgage and the estate and rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

Said notes are dated November 17, 1944, and are in the aggregate principal amount of Two Million Two Hundred

Eighty-seven Thousand Dollars (\$2,287,000.00) and are numbered 1 to 20 inclusive; each note is for the principal sum of One Hundred Fourteen Thousand Three Hundred Fifty Dollars (\$114,350.00) and the dates of their maturity [fol. 179] respectively, are November 17, of the years set opposite their numbers hereinbelow:

<i>Number of Note</i>	<i>Year of Maturity</i>	<i>Number of Note</i>	<i>Year of Maturity</i>
1	1945	11	1955
2	1946	12	1956
3	1947	13	1957
4	1948	14	1958
5	1949	15	1959
6	1950	16	1960
7	1951	17	1961
8	1952	18	1962
9	1953	19	1963
10	1954	20	1964

Whenever hereinafter the word "notes" is used, that word shall be deemed to mean and include the above-mentioned notes, which are substantially in the following form, the blanks therein having been appropriately filled:

FORM OF NOTE

No.

\$

On the day of , 19 , for value received, WATERMAN STEAMSHIP CORPORATION, a corporation duly organized and existing under the laws of the State of Alabama, promises to pay to the UNITED STATES OF AMERICA, or order, the principal sum of

(\$)

and to pay interest on said principal sum from the date hereof at the rate of three and one-half per centum (3½%) per annum, payable semiannually, on the day of

and the day of in each year, first payment due , 19 , until the principal sum

[fol. 180] hereof is paid, both principal and interest to be payable at the office of the United States Maritime Commission, Washington, D.C., in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for public and private debts.

This note is one of a series of twenty (20) notes, aggregating (\$)

principal amount, of like form and tenor, save for their respective numbers and dates of maturity, each of which is issued under and secured by a First Preferred Mortgage, dated , 19 , upon the American steel vessel , Official Number , to which mortgage reference is hereby made for a description of the property thereby mortgaged, the nature and extent of said security, and the rights of the respective holders of the notes in respect of said security. In case an event of default has occurred under said Mortgage, this note may, at the option of the holder, be declared and become immediately due and payable, and the holder shall have other remedies therein or by law provided, all as more fully set forth in said mortgage.

This note may be redeemed at the option of the maker on any semiannual interest date upon at least thirty (30) days' prior written notice, by payment of the principal amount hereof, together with interest thereon to date of payment.

IN WITNESS WHEREOF the undersigned has caused this note to be executed by its officers thereunto duly authorized, the day of , 19 ..

WATERMAN STEAMSHIP CORPORATION

By:
President

By:
Treasurer

ATTEST:

.....
Secretary

[fol. 181] The Shipowner hereby covenants and agrees to pay said balance of the purchase price of said Vessel together with interest thereon as herein and in said notes provided and at all times to keep, perform and observe all and singular the covenants, conditions, stipulations, promises and agreements in this Mortgage and in said notes expressed or implied and on its part to be kept, performed and observed and to pay all sums that may hereafter become due hereunder.

The Shipowner prior to the maturity of the notes shall have the right at its option to redeem any or all of the notes then outstanding on any semi-annual interest date upon at least thirty (30) days' prior written notice to the Mortgagee by the payment of principal amount thereof together with accrued interest thereon to date of payment, but no such redemption shall entitle the Shipowner to a discharge of this Mortgage until all of the covenants, conditions, stipulations and agreements shall have been kept, observed and performed. In case of redemption of less than all of the notes outstanding, the notes to be redeemed shall be selected by the Shipowner.

The Shipowner for itself, its successors and assigns hereby covenants and agrees with the Mortgagee and its successors and assigns that said Vessel and all the appurtenances thereunto appertaining and belonging and all replacements hereafter made in or to the same are to be held by the Mortgagee subject to the further covenants, conditions and uses hereinafter set forth, that is to say:

ARTICLE I

THE SHIPOWNER HEREBY COVENANTS AND AGREES:

Section 1. The Shipowner was duly organized and is now existing as a corporation under the laws of the State of [fol. 182] Alabama and is now, and shall remain during the life of this Mortgage, a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, as amended, and is duly authorized to mortgage the Vessel conveyed hereby, and that all corporate action necessary and required by law for the execution and delivery of this First

Preferred Mortgage, and the good faith affidavit filed herewith, has been duly and effectively taken, and that the aforesaid notes in the hands of the holder thereof are and will be valid and enforceable obligations of the Shipowner in accordance with their terms.

Section 2. The Shipowner lawfully owns and is lawfully possessed of the Vessel free from any lien or incumbrance whatsoever, except liens in favor of the United States, and that it will warrant and defend the title and possession thereto and to every part thereof for the benefit of the Mortgagee against the claims and demands of all persons whomsoever.

Section 3. (a) The Shipowner will, at its own expense, when and so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, insure the Vessel and keep the same insured against all such risks as the Mortgagee from time to time may require, in an amount in dollars, in money of the United States which is legal tender for the payment of public and private debts, equal to the full commercial value of the Vessel, but in no event less than 110 per cent of the amount remaining unpaid on the purchase price of the Vessel from time to time.

(b) Until otherwise required or permitted by the Mortgagee, such insurance shall be as hereinafter specified, that is to say:

(i) Such insurance shall include hull or port risk insurance, and may include such amounts of disbursements and other forms of "total loss only" insurance [fol. 183] as are permitted by the hull or port risk insurance policies. The total amount of insurance in the hull or port risk policies for the Vessel shall equal the valuation of such Vessel stated in such policies.

(ii) While being operated, the Vessel shall always be covered by hull insurance, placed under the form of policy known as American Hull Underwriters Association Form, or under such other form of policy as the Mortgagee may approve, insuring the Vessel against the usual risks covered by such form.

(iii) When and while the Vessel is laid up, in lieu of the aforesaid hull or hull and disbursements insurance, port risk insurance may be taken out thereon by the Shipowner under forms of port risk policies approved by the Mortgagee.

(iv) The Shipowner, at its own expense, when and so long as this mortgage, or any of the notes secured hereby, shall be outstanding, will also keep the said Vessel fully entered in a Protection and Indemnity Association or Club approved by the Mortgagee, in both protection and indemnity classes, or will keep the Vessel fully covered by protection and indemnity clauses in a policy or policies issued by Marine Insurance Companies or Underwriting Funds approved by the Mortgagee, and such protection and indemnity insurance shall also protect the Mortgagee against any liability which the Mortgagee may incur. So long as the Shipowner is not in default hereunder, the Mortgagee shall consent that payment of losses under such insurance shall be made direct to the Shipowner to reimburse it for any loss, damage, or expense suffered or incurred by it and covered by said insurance.

[fol. 184] (c) All insurance required hereunder shall be taken out in the name of the Waterman Steamship Corporation and United States Maritime Commission, for account of whom it may concern, all losses shall be made payable to the United States Maritime Commission, Washington, D. C., and all insurance monies received by said Commission shall be distributed by it as follows:

(i) In the event that insurance (except the insurance required under the foregoing paragraph (b) (iv) of this Section (3) becomes payable under said policies on account of accident or event not resulting in actual or constructive total loss of said Vessel, the Mortgagee shall (a) if the Shipowner is not in default under this Mortgage, consent that the Underwriters pay direct for repairs, salvage, or other charges, or (if the Shipowner shall have first fully repaired the damage or secured complete discharge of the liability insured

against) reimburse the Shipowner therefor; or (b) if the Shipowner is in default under this mortgage, apply the insurance as provided in Article II hereof.

(ii) In the event of an actual or constructive total loss of the Vessel, the Mortgagee shall retain out of insurance payments received on account of said loss, which shall become the sole property of the Mortgagee, any sum or sums that shall be or become owing to the Mortgagee under this mortgage, whether or not the same be then due or payable, together with accrued interest and the cost of collecting the insurance.

(d) When and so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, all policies, binders and cover notes evidencing insurance as required [fol. 185] hereunder shall be delivered to the United States Maritime Commission, Washington, D. C., for its approval and custody.

(e) In the event that any claim or lien is made against the Vessel for loss, damage, or expense which is covered by insurance required hereunder, and it is necessary for the Shipowner to obtain a bond or supply other security to prevent arrest of the Vessel, or to release the Vessel from arrest on account of said claim or lien, the Mortgagee, on request of the Shipowner, may at the sole option of the Mortgagee, assign to any person, firm, or corporation executing a surety or guarantee bond, or other agreement to save or release the mortgaged Vessel from such arrest, all right, title, and interest of the Mortgagee in and to said insurance covering said loss, damage, or expense as collateral security to indemnify against liability under said bond or other agreement.

(f) The Shipowner agrees to keep the premiums and other charges on all insurance required hereunder fully paid. All insurance shall be placed and kept with responsible underwriters in good standing or underwriting funds, satisfactory to the Mortgagee. Unless otherwise permitted by the Mortgagee in writing, all insurance required hereunder shall, in so far as it is, in the judgment of the Mortgagee, practicable and obtainable at reasonable rates, be

placed with American companies, underwriters or underwriting funds and any remaining balance shall, in so far as it is in the judgment of the Mortgagee, practicable and obtainable at reasonable rates, be placed with foreign companies or underwriters which (a) are duly licensed to transact business in the United States and (b) have agents in the United States authorized to issue such policies and (c) have agents or attorneys in the United States upon whom papers and process in legal proceedings against any [fol. 186] such underwriter in a State or Federal Court of the United States can be effectively served, to the end that an appropriate court, in the United States, shall have jurisdiction over any such underwriter in respect to any such policy or policies as fully as such court would have over an American company; and under a policy or policies as to which the United States shall be the place of contract; and, the remaining balance, if any, shall be placed (with foreign companies or underwriters) under policies containing, in so far as practicable, amongst others, the following provision:

"The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless, as between the Assured and the Assurers the place of suit hereon shall be deemed the State of New York, United States of America, and any suit hereon may be brought against this Company in any Court in the State of New York; this policy shall, with respect to validity, construction and enforcement, be governed by and subject to the laws of the State of New York. The summons and other legal processes may be served on this Company by and in behalf of the Assured by mailing a copy thereof by United States registered mail addressed to (Note: Assured shall name in the policy two or more persons, citizens of the United States and legal residents of the State of New York), each of whom this Company hereby authorizes to accept by and in its behalf such summons and other legal processes against this Company in any Court in the State of New York. The mailing, as herein provided, of such summons or other legal process shall be deemed personal service and accepted by this Company as such, and shall be

legal and binding upon this Company for all the purposes of the suit. Final judgment against this Company in any such suit shall be conclusive; and it may [fol. 187] be enforced in other jurisdictions, including Great Britain, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purposes of suit as herein provided, the word 'Assured' includes any mortgagee under a ship mortgage and any person succeeding to the rights of any such mortgagee."

(g) The Shipowner agrees that it will not do any act, nor voluntarily suffer nor permit any act to be done, whereby any insurance shall or may be suspended, impaired, or defeated and will not suffer nor permit the Vessel to engage in any voyage, nor to carry any cargo not permitted under the policies of insurance in effect, without first covering the Vessel, to the amount herein provided for, with insurance satisfactory to the Mortgagee for such voyage or the carriage of such cargo.

Section 4. So long as this Mortgage, or any of the notes secured hereby, shall be outstanding, the Shipowner will not cause nor permit the Vessel to be operated in any manner contrary to law, or contrary to any lawful rules or regulations which the UNITED STATES MARITIME COMMISSION may from time to time prescribe.

Section 5. Neither the Shipowner nor the Master of the Vessel has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon the Vessel any liens whatsoever, other than for crew's wages or salvage.

Section 6. A properly certified copy of this Mortgage shall be carried with the ship's papers on board the Vessel, [fol. 188] and shall be exhibited, on demand, to any person having business with the Vessel, or to any representative of the Mortgagee; and a notice, reading as follows, printed in plain type of such size that the paragraph or reading matter

shall cover a space not less than six inches wide by nine inches high, framed, shall be placed and kept prominently in the chart room and in the Master's cabin of the Vessel:

NOTICE OF MORTGAGE

"This Vessel is covered by a Preferred Mortgage to the UNITED STATES OF AMERICA, under authority of the 'Ship Mortgage Act, 1920,' as amended, to secure payment to the UNITED STATES OF AMERICA of the unpaid purchase price of the Vessel. Under the terms of said mortgage neither WATERMAN STEAMSHIP CORPORATION, nor the Master of the Vessel has any right, power or authority to create, incur or permit to be imposed upon the Vessel any liens whatsoever other than for crew's wages or salvage."

Section 7. If a libel shall be filed against said Vessel, or if the Vessel shall be levied upon or taken into custody, or detained by any proceeding in any court or tribunal or by any Government or other authority, the Shipowner within fifteen (15) days thereafter will cause the Vessel to be released and any lien thereon, other than this Mortgage, to be discharged. In the event a libel is filed against said Vessel, or in the event said Vessel is levied upon or taken into custody or detained by any authority whatsoever, the Shipowner agrees forthwith to notify the UNITED STATES MARITIME COMMISSION thereof by telegram, confirmed by letter, at its office in Washington, D. C.

[fol. 189] *Section 8.* The Shipowner will at all times and at its own cost and expense maintain and preserve the Vessel, so far as may be practicable, in at least as good condition, working order and repair as the Vessel is in at the date of this Mortgage, ordinary wear and tear and depreciation excepted; and will keep the Vessel in such condition as will entitle her to the highest classification and rating for vessels of the same age and type in the American Bureau of Shipping, and annually will furnish to the Mortgagee a certificate by such Bureau that such classification is maintained. The Vessel shall and the Shipowner covenants that

it will, at all times comply with all applicable United States laws, treaties and conventions, and rules and regulations issued thereunder, including particularly, but without limitation by this enumeration, International Convention for Safety of Life at Sea, 1929, and all laws, rules and regulations administered by the United States Coast Guard, Navy Department, the Bureau of Customs, Treasury Department, and the United States Federal Communications Commission, and shall have on board as and when required thereby valid certificates showing compliance therewith. The Shipowner will make no substantial change in the structure, type or speed of the vessel nor change in her rig, without first receiving the written approval thereof by the Commission.

Section 9. The Shipowner will at all times afford the Mortgagee or its authorized representatives full and complete access to the Vessel for the purpose of inspecting the Vessel, its cargoes and papers; and, so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, the Shipowner shall permit a representative of the Mortgagee to make one round trip on one of the regular trips of the Vessel, each calendar year, for the purpose of inspecting the Vessel in full operation at sea, the time of such trip to be selected by the Mortgagee with reasonable [fol. 190] notice to the Shipowner; and the Shipowner, at its own cost, shall furnish such representative regular first class cabin accommodations and subsistence during such trip, including the time of the Vessel's stay in port or ports other than port of embarkation; and the Shipowner shall arrange that the Master of the Vessel will cooperate with such representative and render him all assistance in such inspection.

Section 10. The Shipowner will pay and discharge when due and payable from time to time, all taxes, assessments, Governmental charges, fines and penalties lawfully imposed on the Vessel.

Section 11. The Shipowner will not sell, mortgage, transfer, nor demise charter the Vessel without the written consent of the Mortgagee first had and obtained and any such written consent to any one sale, mortgage, transfer or charter shall not be construed to be a waiver of this provi-

sion in respect to any subsequent proposed sale, mortgage, transfer or charter. Any such sale, mortgage, transfer or charter of the Vessel shall be subject to the provisions of this Mortgage and the lien it creates.

Section 12. The Shipowner will comply with and satisfy all the provisions of the Ship Mortgage Act, 1920; as amended, in order to establish and maintain this mortgage as a first preferred mortgage upon the Vessel and upon all renewals, improvements and replacements made in or to the same.

Section 13. So long as this Mortgage or the notes secured hereby are outstanding, the Vessel shall remain documented under the laws of the United States.

Section 14. In the event that this Mortgage, the notes, or any provisions hereof or thereof shall be deemed invalid [fol. 191] dated in whole or in part by reason of any present or future law of the United States or any decision of any authoritative court; or if the documents at any time held by the Mortgagee be deemed by the Mortgagee for any reason insufficient to carry out the true intent and spirit of this Mortgage and said notes, then, from time to time the Shipowner will execute on its own behalf, such other and further assurances and documents as in the opinion of counsel for the Mortgagee may be required more effectually to subject the Vessel to the payment of the principal sum of the mortgage debt, together with interest thereon, as in said notes and as herein provided, and the performance of the terms and provisions of the notes and this Mortgage.

ARTICLE II

Section 1. In case any one or more of the following events, herein termed "Events of Default", shall happen; that is to say, in case

(a) default shall be made in the payment of the whole or any part of the interest on any of said notes when and as the same shall become due and payable as therein and herein provided and the same shall continue for fifteen (15) days; or

(b) default shall be made in the payment of the whole or any part of the principal of any said notes when the same shall become due and payable, whether at maturity, by notice of redemption, or otherwise; or

(c) default shall be made in the due and punctual observance and performance of any provision of Sections 3, 4, 5, 6, 7, 12, 13 or 14 of Article I hereof; or

[fol. 192] (d) the Shipowner shall demise charter, sell, mortgage or transfer said Vessel or shall attempt to demise charter, sell, mortgage or transfer said Vessel, without the written consent of the Mortgagee; or

(e) the Vessel shall be libelled or levied upon or taken by virtue of any attachment or execution or seized by any Governmental authority, and shall not be released from such libel, levy, attachment, execution or seizure within fifteen (15) days; or

(f) the Shipowner shall remove or attempt to remove said Vessel beyond the limits of the United States, save on voyages with the intention of returning to the United States, or shall abandon the Vessel in a foreign port; or

(g) the Shipowner shall be dissolved or adjudged a bankrupt or shall make a general assignment for the benefit of its creditors or shall lose its charter by forfeiture or otherwise, or a receiver or receivers of any kind whatsoever, whether appointed or not in Admiralty, Bankruptcy, Common Law or equity proceedings, and whether temporary or permanent, shall be appointed for the Vessel or for the property of the Shipowner; or a petition for reorganization of the Shipowner under the Bankruptcy Act shall be filed by the Shipowner, or such petition shall be filed by creditors and the same is approved by the Court; or if reorganization of the Shipowner under said Act is approved by the Court, whether proposed by a creditor, a stockholder or any other person whomsoever; or

(h) the Shipowner ceases to be a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, as amended; or

[fol. 193] (i) default shall be made by the Shipowner in the prompt and faithful performance or observance of any other covenant, condition or agreement by it to be performed and observed, contained in said notes or in this Mortgage and such default shall continue for fifteen (15) days;

then and in each and every such case the Mortgagee thereupon may

(1) declare all the principal sum and the notes then outstanding, with the interest thereon, to be due and payable immediately, and upon such declaration the same with interest to date of declaration shall become and be immediately due and payable, and thereafter shall bear interest at the rate of six per centum (6%) per annum; provided, however, that if before any sale of any of the mortgaged property all defaults shall have been remedied and removed and full performance made by the Shipowner to the satisfaction of the Mortgagee and all installments of principal and interest in arrears (including interest at six per centum (6%) after declaration as aforesaid) and the reasonable charges and expenses of the Mortgagee, its agents and attorneys, shall have been paid, then and in every such case the Mortgagee shall waive any such default by written notice to that effect to the Shipowner; but no such waiver shall extend to nor affect any subsequent or other default nor impair any rights or remedies consequent thereon;

(2) bring suit at law, in equity or in admiralty, as it may be advised, to recover judgment for any and all amounts due under said notes, or any of them, or otherwise hereunder, and collect the same out of any and all property of the Shipowner whether covered by this Mortgage or otherwise:

[fol. 194] (3) retake the Vessel without legal process wherever the same may be; and the Shipowner or other person in possession forthwith upon demand of the Mortgagee shall surrender to the Mortgagee possession of the Vessel and the Mortgagee may hold, lay-up,

lease, charter, operate, or otherwise use the Vessel for such time and upon such terms as it may deem to be for its best advantage, accounting only for the net profits, if any, arising from such use of the Vessel and charging upon all receipts from the use of the Vessel or from the sale thereof by court proceedings or pursuant to Sub-section (4) next following, all costs, expenses, charges, damages, or losses by reason of such use; and if at any time the Mortgagee shall avail itself of the right herein given it to retake the Vessel and shall retake it the Mortgagee shall have the right to dock the Vessel for a reasonable time at any dock, pier or other premises of the Shipowner without charge, or to dock it at any other place at the cost and expense of the Shipowner;

(4) (in addition to any and all other rights, powers, and remedies elsewhere in this Mortgage or by law granted to and conferred upon the Mortgagee) sell the Vessel upon such terms and conditions as to the Mortgagee shall seem best calculated to promote the objects of the Merchant Marine Act, 1936, as amended, including the right to sell and dispose of the Vessel, free from any claim of or by the Shipowner, at public sale, by sealed bids or otherwise, by first publishing notice of any such sale for ten (10) consecutive days, except Sundays, in some newspaper published in the City of New York, State of New York, and in some newspaper, if any, published at the place designated for such sale, and by mailing notice of such sale to the Shipowner at its last known address, and any such sale may be held [fol. 195] at such place and at such time as the Mortgagee in such notices may have specified, or may be adjourned by the Mortgagee from time to time by announcement at the time and place appointed for such sale or for such adjourned sale, and without further notice or publication the Mortgagee may make any such sale at the time and place to which the same shall be so adjourned; and any such sale may be conducted without bringing the Vessel to the place designated for such sale and in such manner as the Mortgagee may deem to be for its best advantage, and the Mortgagee may become the purchaser at any such sale, and shall

have the right to credit on the purchase price any or all sums of money due to the Mortgagee under the said notes, or otherwise hereunder.

The Shipowner does hereby irrevocably appoint the Mortgagee and its assigns the true and lawful attorney and attorneys of the Shipowner, in its name and stead to make all necessary transfers of the Vessel, and for that purpose it or they shall execute all necessary instruments of assignment and transfer, the Shipowner hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof. Nevertheless, the Shipowner shall, if so requested by the Mortgagee, ratify and confirm such sale by executing and delivering to the purchaser of the Vessel such proper bill of sale, conveyance, instrument of transfer and releases as may be designated in such request.

The Shipowner covenants and agrees that in addition to any and all other rights, powers, and remedies elsewhere in this Mortgage granted to and conferred upon the Mortgagee, the Mortgagee in any suit to enforce any of its rights, powers, or remedies, if an event of default has occurred and has not been cured, shall be [fol. 196] entitled as a matter of right and not as a matter of discretion (i) to the appointment of a receiver or receivers of the Vessel and that any receiver so appointed shall have full rights and powers to use and operate the Vessel, and (ii) to a decree ordering and directing the sale and disposal of said Vessel, and the Mortgagee may become the purchaser at said sale, and the Mortgagee shall have the right to credit on the purchase price any and all sums of money due to the Mortgagee under the said notes, or otherwise hereunder.

Section 2. In the event that the Vessel shall be arrested or detained by a Marshal or other Officer of any court of law, equity or admiralty jurisdiction in any country or nation of the world or by any Government or other authority and shall not be released from arrest or detention within fifteen (15) days from the date of arrest or detention, the Shipowner does hereby authorize and empower

the UNITED STATES MARITIME COMMISSION, or any public officer or officers who may by law succeed said Commission, in the name of the Shipowner, or its successors or assigns, to apply for and receive possession of and to take possession of the Vessel with all the rights and powers that the Shipowner, or its successors or assigns might have, possess and exercise in any such event; and this power of attorney shall be irrevocable and may be exercised not only by the officials hereinabove named but also by an appointee or appointees of such Commission with full power of substitution to the same extent as if the said appointee or appointees had been named as one of the attorneys above-named by express designation.

The Shipowner, also authorizes and empowers the UNITED STATES MARITIME COMMISSION or its ap-[fol. 197] pointees or any of them to appear in the name of the Shipowner, its successors and assigns, in any court of any country or nation of the world where a suit is pending against the Vessel because of or on account of any alleged lien against the Vessel from which the Vessel has not been released and to take such proceedings as to them or any of them may seem proper towards the defense of such suit and the discharge of such lien, and all expenditures made or incurred by them or any of them for the purpose of such defense or discharge shall be a debt due from the Shipowner, its successors and assigns, to the UNITED STATES OF AMERICA, and shall be secured by the lien of this Mortgage in like manner and extent as if the amount and description thereof were written herein.

Section 3. Each and every power and remedy herein specifically given to the Mortgagee or otherwise in this Mortgage shall be cumulative and shall be in addition to every other power and remedy herein specifically given or now or hereafter existing at law, in equity, admiralty or by statute, and each and every power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to

exercise at the same time or thereafter any other power or remedy. No delay or omission by the Mortgagee or by any of the holders of the notes secured hereby in the exercise of any right or power or in the pursuance of any remedy accruing upon any default as above defined shall impair any such right, power or remedy or be construed to be a waiver of any such event of default or to be any acquiescence therein; nor shall the acceptance by the Mortgagee of any security or of any payment of or on account of any note [fol. 198] or notes maturing after any event of default or of any payment on account of any past default be construed to be a waiver of any right to take advantage of any future event of default or of any past event of default not completely cured thereby.

Section 4. In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee, then and in every such case the Shipowner and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Mortgage, and all rights, remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken.

Section 5. The proceeds of the sale of the Vessel and the net earnings from any management, charter, or other use of the same by the Mortgagee under any powers above specified, including the proceeds of any claims for damages on account of the Vessel, and of any insurance received by the Mortgagee for the account of the Vessel while exercising any such power shall be applied as follows:

First: To the payment of all expenses and charges including the expenses of any sale, the expenses of any retaking, attorneys' fees, court costs, and any other expenses or advances made or incurred by the Mortgagee in the protection of its rights or the pursuance of its remedies hereunder, and to provide adequate indemnity against liens claiming priority over or equality with this Mortgage;

Second: To the payment of all sums and notes secured hereby, and of all damages liquidated or otherwise, hereunder, together with interest thereon;

[fol. 199] *Third:* To the payment of any surplus thereafter remaining to the Shipowner or to whomsoever may be entitled thereto.

In the event that the proceeds are insufficient to pay the amounts specified in paragraphs "First" and "Second" above, the Mortgagee shall be entitled to collect the balance from the Shipowner, or any other person liable therefor.

Section 6. If the Shipowner shall make default in the observance or performance of any of the covenants, conditions or agreements in this Mortgage or its part to be performed or observed, the Mortgagee may in its discretion do all acts and make all expenditures necessary to remedy such default, including, without limitation of the foregoing, entry upon the Vessel to make repairs, and the Shipowner shall promptly reimburse the Mortgagee, with interest at the rate of six per centum (6%) per annum, for any and all expenditures so made or incurred and until the Shipowner has so reimbursed the Mortgagee for such expenditures the amount thereof shall be a debt due from the Shipowner to the Mortgagee and payment thereof shall be secured by the lien of this mortgage in like manner and extent as if the amount and description thereof were written herein; but the Mortgagee though privileged so to do shall be under no obligation to the Shipowner to make any such expenditures nor shall the making thereof relieve the Shipowner of any default in that respect. The Shipowner shall also reimburse the Mortgagee promptly with interest at the rate of six per centum (6%) per annum for any and all advances made or incurred by the Mortgagee at any time in retaking the Vessel or otherwise protecting its rights hereunder, and for any and all damages sustained by the Mortgagee from or by reason of any default or defaults of the Shipowner.

[fol. 200]

ARTICLE III

In case the Shipowner permits the Vessel by voluntary act or voluntary omission to become a Vessel not documented under the laws of the United States, the Shipowner shall pay to the Mortgagee an amount equal to the difference between the interest in fact paid or which may be payable on account of the Vessel, computed at the rate prescribed in this Mortgage, and the amount such interest would have been in the case of the Vessel if it had been computed at seven per centum (7%) per annum from the date of this Mortgage.

ARTICLE IV

Until some one or more of the events of default hereinbefore described shall happen, the Shipowner shall be suffered and permitted to retain actual possession and use of the Vessel.

ARTICLE V

Section 1. This Mortgage may be executed simultaneously in any number of counterparts and all such counterparts executed and delivered each as an original shall constitute but one and the same instrument.

Section 2. All the covenants, promises, stipulations and agreements of the Shipowner in this Mortgage contained shall bind the Shipowner and its successors and assigns and shall inure to the benefit of the Mortgagee and its assigns, and all the covenants, promises, stipulations and agreements of the Mortgagee shall bind the Mortgagee and its assigns and shall inure to the benefit of the Shipowner and its successors and assigns, whether so expressed or not.

Section 3. Wherever and whenever herein any right, power, or authority is granted or given to the UNITED STATES OF AMERICA, whether named as Mortgagee or [fol. 201] otherwise, such right, power, and authority may be exercised in all cases by the UNITED STATES MARITIME COMMISSION or such agent or agents as it may appoint, and the act or acts of such agent or agents when taken shall constitute the act of the Mortgagee hereunder.

ARTICLE VI

For purpose of endorsement of this Preferred Mortgage on the document of the Vessel as required by law (Section D of Ship Mortgage Act, 1920, as amended), the total amount is Two Million Two Hundred Eighty-seven Thousand Dollars (\$2,287,000.00) and interest and performance of mortgage covenants, the date of maturity is November 17, 1964, and the discharge amount is the same as the total amount.

IN WITNESS WHEREOF, the Shipowner has executed this Mortgage the day and year first above written.

WATERMAN STEAMSHIP CORPORATION

By: E. A. ROBERTS

President

(CORPORATE SEAL)

ATTEST:

J. A. TOWNSEND

Secretary

By: H. C. SLATON

Treasurer

APPROVED:

FRANCES B. GOERTNER

W. R. FITCH

Assistant General Counsel

U. S. Maritime Commission

[fol. 202]

ACKNOWLEDGMENT

STATE OF ALABAMA }
COUNTY OF MOBILE } SS:

I, Eunice Murray, a Notary Public in and for said county and state, do hereby certify that E. A. Roberts, whose name as President of the WATERMAN STEAMSHIP CORPORATION, a corporation duly organized and existing under

the laws of the State of Alabama, is signed to the foregoing Preferred Mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of the Preferred Mortgage, he as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand this the 17th day of November, 1944.

EUNICE MURRAY
Notary Public

(SEAL)

My Commission Expires:
October 30, 1947.

AFFIDAVIT

STATE OF ALABAMA }
COUNTY OF MOBILE } SS:

E. A. Roberts being duly sworn, deposes and says that he is President of WATERMAN STEAMSHIP CORPO- [fol. 203] RATION, the corporation described in and which executed the above and foregoing mortgage; that said mortgage is made by said WATERMAN STEAMSHIP CORPORATION in good faith and without any design to hinder, delay or defraud any existing or future creditor of the said WATERMAN STEAMSHIP CORPORATION, or any lienor of the mortgaged vessel; and that this affidavit is made pursuant to an order of the Board of Directors of said WATERMAN STEAMSHIP CORPORATION.

E. A. ROBERTS

Subscribed and sworn to before me
this 17th day of November, 1944.

EUNICE MURRAY
Notary Public

(SEAL)

My Commission Expires October 30, 1947.

A TRUE COPY OF THE LATEST CERTIFICATE OF REGISTRY

REGISTERED
(PARTICULARS OF REGISTRY)
REGISTER NO. **25**

The United States of America
TREASURY DEPARTMENT
BUREAU OF CUSTOMS

OFFICIAL NO. **25259**
NUMBER AND
FILL FOR
LETTER **2525**

Measured **Mobile, Alabama** **1924**

Rebuilt at **Mobile, Alabama**

Service **General Freight**

Number of Crew, including Master, **12**

Horsepower **6,000 2525**

75 per cent of the interest
in the corporation owning this
vessel is owned by citizens of
the United States as required
by law. It may engage in the
coastwise trade so long as so
owned and be tonnage

Certificate of Registry

NET TONNAGE 27.7 TON
G. R. 25 270 TON
G. R. 25 270 TON

In Pursuance of Chapter One, Title XLVIII, "Regulation of Commerce and Navigation," Revised Statutes of the United States.

J. A. Townsend, of Mobile, Alabama, Merchant, Mobile, Alabama, as Master,
having taken and subscribed the oath required by law, and having sworn that

MOBILE, ALABAMA
1924
MOBILE, ALABAMA
MOBILE, ALABAMA
MOBILE, ALABAMA

citizen of the United States and the sole owner of the vessel called the
MASTERS of **MOBILE, ALABAMA**
whereof **J. A. Townsend** is at present master, and is a citizen of the United States,
and that the said vessel was built in the year **1924** at **Mobile, Alabama**
of **Mobile, Alabama** as appears by the certificate of the **Mobile, Alabama**
and **Mobile, Alabama** having certified that
the said vessel **Mobile, Alabama** that she has
deck **Mobile, Alabama** stem, and a **Mobile, Alabama** stern; that her
register length is **27.7** feet, her register breadth **27.7** feet, her register depth **27.7** feet,
her height **27.7** feet; that she measures as follows:

	TONS	TONS
Capacity under tonnage deck	6,000	27.7
Capacity between decks above tonnage deck	27.7	27.7
Capacity of enclosures on the upper deck, viz: Forecastle; bridge; poop; break	27.7	27.7
houses; rooms; chart; radio; excess hatchways; light and air	27.7	27.7
GROSS TONNAGE		
Deductions under Section 1153, Revised Statutes, as amended (Sec. 77, Title 44, U. S. C.):		
Crew space; Master's cabin	27.7	27.7
Steering gear; Anchor gear; Boatwain's stores	27.7	27.7
Chart house; Donkey engine and boiler; Radioboom	27.7	27.7
Storage of sails; Propelling power (actual space)	27.7	27.7
TOTAL DEDUCTIONS		
	27.7	27.7
NET TONNAGE		
Other spaces (not double bottom) for water ballast; Forepeak; other spaces	27.7	27.7
deck; cabins; companions; galley; skylights; water closet; anchor	27.7	27.7
condenser; donkey engine and boiler; steering gear; light and air over propelling machinery	27.7	27.7

and **G. S. Townsend** having agreed to the description and measurement above specified, the vessel has been duly REGISTERED at this PORT;

at **Mobile, Alabama**, this **25** day of **November**, in the year one thousand nine hundred and **1924**

JOHN E. L. LUTZ, Collector,

(SEAL) **(S) W. E. JENNINGS**
Commissioner of Customs

(SEAL) **JOHN E. L. LUTZ**
Collector of Customs

STIPULATION G

EXHIBIT 30

25, D.C.

November 9, 1944

Edouard F. Henriques, Esquire
Regional Attorney, Gulf Coast
United States Maritime Commission
348 Baronne Street
New Orleans 12, Louisiana

Dear Mr. Henriques:

Re: SS HASTINGS (246617)—Sale under Mortgage to
Waterman Steamship Corporation

I send you herewith bill of sale, in duplicate, one counterpart of preferred mortgage, and form of note for use in closing the sale of the SS HASTINGS under mortgage to Waterman Steamship Corporation. This sale is now scheduled for closing at Mobile, November 17, 1944.

At the request of the buyer, I have sent direct to Waterman Steamship Corporation, at Mobile, six counterparts of the preferred mortgage form and twenty notes. In this connection you and the buyer should make certain that inasmuch as the mortgage and notes are dated November 17 (at the buyer's express request), they should not be acknowledged prior to that date.

As stated on the first page of the mortgage, the purchase price of the SS HASTINGS to the buyer on November 17, 1944, is \$2,642,706.03, payable on or before the day of closing in the sum of \$355,706.03 and the balance as provided in [fol. 206] the mortgage and notes. As the buyer has already paid \$325,000, there should be collected by you on or before the day of closing only the sum of \$30,706.03, if the closing is effected November 17 as planned. Should the closing be delayed, however, there should be collected for each day of delay after November 17 the sum of \$177.58805.

[fol. 221]

April 18, 1949

Chief, Division of Accounts

Attention: Mr. C. W. Levis

Chief, Division of Claims

Waterman Steamship Corporation—Application No. 2109-D
for Adjustment for Prior Sales to Citizens under Section 9
of the Merchant Ship Sales Act of 1946.

This Division is presently engaged in reprocessing the
subject application for final adjustment of the prior sales
price of the following vessels:

SS FAIRISLE	MC Hull No. 850
SS FAIRLAND	" 472
SS RAPHAEL SEMMES	" 473
SS BIENVILLE	" 478
SS AZALEA CITY	" 477
SS WARRIOR	" 479
SS JEAN LAFITTE	" 480
SS AFOUNDRIA	" 482
SS WACOSTA	" 1602
SS YAKA	" 1605
SS HASTINGS	" 1606
SS MADAKET	" 1607
SS ANDREW JACKSON	" 1608
SS CITY OF ALMA	" 1609
SS KYSKA	" 1612
SS MAIDEN CREEK	" 1613
SS FAIRPORT	" 1614
SS JOHN B. WATERMAN	" 2826

[fol. 222] Since the information previously furnished to
the Division of Finance, Construction, with respect to
"Price and Payment" and which in turn was supplied to
the then Large Vessel Sales Division, in statement form,
the files of this Division do not contain the original data,
therefore, it is respectfully requested that this Division be
furnished with information as follows with respect to each
of the eighteen vessels listed above:

1. Cash paid on delivery
2. Interest paid in progress payments
3. Trade-in Allowance
4. Original mortgage
5. Total original purchase price
6. Adjustment to original purchase price under the terms of purchase contract (indicate whether by mortgage adjustment or cash)
7. Mortgage payments to 3-8-46
8. Mortgage balance at 3-8-46
9. Interest accrued as of 3-8-46
10. Date interest accrued as of 3-8-46 was paid

(sgd.) J. HOLLIS ORCUTT
J. Hollis Orcutt
Chief, Division of Claims

LEMadigan/mem

cc: Orcutt

Madigan—room 4803

Reading file, Division of Claims

Reading file, Bureau of Finance—4857

General files—2

It is my understanding that the vessel is to be requisitioned by the War Shipping Administration on a bareboat basis simultaneously with delivery to the buyer so that the buyer will not be required to place any insurance to meet the mortgage requirements.

Edouard F. Henriques, Esquire—11/9/44—2

As stated in the mortgage, the agreement for the sale of this vessel is dated as of August 14, 1944.

I am sending copies of this letter to the Collector of Customs and the buyer at Mobile, Alabama for their information.

Very truly yours,

FRANCIS B. GOERTNER
Assistant General Counsel

Enclosures

WRFitch/amb

cc: Waterman Steamship Corporation
Merchants National Bank Bldg.
Mobile, Alabama

Attn: Mr. H. C. Slaton, Vice President
Collector of Customs, Mobile, Alabama
Director of Insurance, Maritime

STIPULATION G

EXHIBIT 59

Contract No. WSA-8884

Form No. 103 (Rev.)

4/4/44

WARSHIPDEMISE (Rev.)

WAR SHIPPING ADMINISTRATION
REQUISITION BAREBOAT CHARTER
FOR DRY CARGO AND TANK VESSELS

WHEREAS, pursuant to Section 902 of the Merchant Marine Act, 1936 as amended, and the President's Executive Order No. 9054, as amended, the Administrator, War Shipping Administration, has requisitioned the use of the Vessel:

NOW, THEREFORE, pursuant to said Section 902, the Administrator, War Shipping Administration, hereby transmits to the Owner this Charter, consisting of Part I and Part II, setting forth the terms which, in the Administrator's judgment, should govern the relations between the Charterer and the Owner and a statement of the rate of hire which, in the Administrator's judgment, will be just compensation for the use of the Vessel under the terms of this Charter:

REQUISITION BAREBOAT CHARTER, dated as of November 17, 1944, between Waterman Steamship Corporation Address, Mobile, Alabama. OWNER of the SS HASTINGS (herein called the "Vessel"), and UNITED STATES OF AMERICA, acting by and through the [fol. 208] Administrator, War Shipping Administration, CHARTERER, the terms of the Charter being as follows:

PART I

The Vessel's particulars on which the rate of hire and valuation have been based, in part, by the Administrator are as follows:

DEADWEIGHT capacity, as defined in Clause 18, Part II.
 10,979 tons

CLASSED At American Bureau of Shipping

BALE CAPACITY of refrigerated cargo space, as represented by the Owner, exclusive of ship's stores and space installed by or at the expense of Charterer None cubic feet.

YEAR BUILT 1944.

CLAUSE A. PERIOD OF CHARTER: From the time of delivery to the time of expiration of the voyage current at the end of the emergency proclaimed by the President of the United States on May 27, 1941; provided, however, that either party may sooner terminate this Charter upon not less than thirty (30) days' written or telegraphic notice to the other. In either case the Vessel shall be redelivered as hereinafter provided.

CLAUSE B. HIRE: The Owner is hereby given an election either (I) to accept the rate of hire hereinafter set forth in Option I, which states the rate which in the Administrator's judgment will be just compensation for the use [fol. 209] of the Vessel under the terms of this Charter; or (II) to decline to accept such rate of hire and to have the amount of just compensation judicially determined. If the Owner elects Option I, hire at the rate therein stated shall be paid by the Charterer to the Owner in the manner provided in Part II. If the Owner does not accept the rate of hire set forth in Option I, the right of the Owner to pursue whatever legal remedy it may have to recover just compensation under the laws and Constitution of the United States shall not be impaired or prejudiced either by the execution and delivery of this Charter, or by the acceptance of 75 per centum of the rate of hire set forth in Option I, and this Charter, in any such event, shall then be deemed an agreement governing only the relations between the Owner and the Charterer in respect to matters other than the amount of just compensation for the use of the Vessel under the terms of this Charter. Where Option II applies

the Charterer reserves all rights which it may have to readjust or redetermine the rate of hire at any time after July 1, 1945. The right to modify or change the terms of the Charter is reserved where the Charter has not been executed by the Owner and delivered to the Charterer.

OPTION I—The hire shall be \$33,033.83 per calendar month or pro rata for any portion thereof.

OPTION II—The Charterer shall pay to the Owner just compensation, to be judicially determined, for the use of the Vessel under the terms of this Charter, and, subject to the Charterer's reservations as to readjustment or redetermination of the rate of hire, the Charterer shall pay on account of just compensation a sum equal to 75 per centum of the hire otherwise payable under the terms of this Charter, as the same may from time to time be due under the terms of this Charter, and the Owner shall be [fol. 210] entitled to sue the United States to recover such further sum as added to such 75 per centum will make up such amount as will be just compensation. The term "just compensation" as used in this Clause B and elsewhere in this Charter shall be deemed to include interest, if any, to which the owner would be entitled if it had not executed and delivered this Charter.

TIME OF ELECTION BETWEEN OPTIONS—The Owner shall elect between Option I and Option II at the time the Owner signs this Charter, unless a rate has not then been inserted in Option I. In the latter case, such election shall be made by the Owner in writing within thirty (30) days after receipt of written notice from the Charterer of the rate to be so inserted. In the event of the Owner's failure to elect Option I at the time of signing, or within such 30-day period, as the case may be, Option II shall apply; provided, however, that at any time after election has been made of either Option I or Option II, but before redelivery and before commencement of suit for just compensation, the Owner, subject to the approval of the Charterer, may, if it has elected Option I herein, change such election to Option II, effective as of the date of such change and notice thereof to the Charterer, or if it has

elected Option II herein, change such election to Option I, effective as of the time of delivery under this Charter or such other mutually agreeable date as the Charterer may fix. Whenever Option II is applicable, it shall be deemed to have been elected for the purpose of this proviso.

RATE REVISION (Option I only)—At any time after July 1, 1945 but not more often than once every 12 months thereafter, either party may request a redetermination of the rate of charter hire upon ninety (90) days' written or [fol. 211] telegraphic notice to the other. If a revised rate is determined and agreed upon within such 90-day period, it shall become effective as of the date specified in the determination and shall continue for the balance of the period of this Charter, subject to further redetermination in accordance with the provisions of this paragraph. If a revised rate is not determined and agreed upon within any such 90-day period, then the rate of hire in effect at the time of such notice shall apply only until noon (EWT) of the day after the end of such 90-day period, and the Charterer shall make a redetermination of the rate of hire, as to which the provisions of Option II of this Clause B shall apply for the balance of the period of this Charter. A change in the rate of charter hire under this paragraph shall not terminate the period of or otherwise modify the provisions of this Charter, and any such change shall be without prejudice to the rights of either party to terminate this Charter as provided in Clause A, Part I.

CLAUSE C. VALUATION. The Owner shall elect between the following options, unless this is a Vessel subject to the provisions of Section 802 of the Merchant Marine Act 1936, as amended, in which event the Owner shall not have the right to elect Option I, and Option II shall apply.

OPTION I—In the event of loss or damage to the Vessel due to the operation of a risk assumed by the Charterer under the terms of this Charter, the Charterer shall pay to the Owner just compensation, to be judicially determined, for such loss or damage, to the extent the person entitled thereto is not reimbursed therefor through policies of insurance against such loss or damage. In such event the

amount of just compensation shall be determined and tendered by the Charterer as soon as practicable after the loss or damage, but if the amount of just compensation so determined is unsatisfactory to the person entitled thereto, [fol. 212] the Charterer shall pay to such person 75 per centum of the amount so determined, and such person shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum, will make up such amount as will be just compensation for the loss of or damage to the Vessel.

OPTION II—For the period commencing with the delivery of the Vessel under this Charter and ending noon, (EWT) April 20, 1945, the agreed valuation of the Vessel for the purposes of this Charter and any insurance undertaken by the Charterer is the sum of \$..... For each subsequent twelve (12) month period the valuation, unless otherwise agreed, shall be reduced by, but any Owner who shall be dissatisfied with such reduction shall have the option, to be exercised on or before April 1st of any year commencing April 1st, 1945, to elect Option I for the period commencing at noon (EWT) of the following April 20th, and effective for the balance of the term of this Charter. In event of such election, the provisions of Option I shall control for all purposes from such effective date.

The foregoing provisions of this Option II shall not be applicable to a Vessel subject to the provisions of Section 802 of the Merchant Marine Act, 1936, as amended. For the purposes of this Charter and any insurance undertaken by the Charterer, any such Vessel shall be valued as of the date of loss at the actual depreciated construction cost of the Vessel (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features), less the depreciated amount of construction-differential subsidy theretofore paid incident to the construction or reconditioning of such Vessel, or the fair and reasonable scrap value of such Vessel as determined by the Charterer, whichever is greater. In computing the depreciated value of the Vessel, depreciation shall be computed on the Vessel on the schedule

adopted by the Bureau of Internal Revenue for income-tax purposes.

By mutual agreement the valuation provisions of this Option II may be superseded as of the date of loss or any other mutually agreeable date in the event that the Charterer shall adopt any plan with respect to replacement of vessels which is applicable to this Vessel.

TIME OF ELECTION BETWEEN OPTIONS—Except as otherwise provided in Valuation Option II above, the Owner shall elect between Option I and Option II at the time the Owner signs this Charter, unless a valuation has not then been inserted in Option II. In the latter case, such election shall be made by the Owner in writing within thirty (30) days after receipt of written notice from the Charterer of the valuation to be so inserted. In the event of the Owner's failure to elect Option II at the time of signing or within such 30-day period, as the case may be, Option I shall apply.

CLAUSE D. PORT OF DELIVERY: Mobile, Alabama.

CLAUSE E. TIME AND DATE OF DELIVERY: 2:10 P.M., CWT, November 17, 1944.

CLAUSE F. PORT OF REDELIVERY: Port of delivery, unless otherwise agreed; provided however, that at Owner's option, redelivery shall be made at the U.S. continental port where the Owner maintains its principal operating headquarters.

[fol. 214] **CLAUSE G. NOTICE OF REDELIVERY:** The Charterer shall give not less than thirty (30) days' written or telegraphic notice.

CLAUSE H. UNIFORM TERMS: This Charter consists of this Part I and Part II, conforming to the Requisition Bareboat Charter for Dry Cargo and Tank Vessels, published in the Federal Register of April 8, 1944. The provisions of Part II shall be incorporated by reference in and need not be attached to Part I of this Charter, and unless in this Part I otherwise expressly provided, all of the provisions of Part II shall be part of this Charter as though fully set forth in this Part I.

CLAUSE I. PRIOR CHARTER OR REQUISITION:

Execution and delivery of this Charter by the Owner shall not impair any rights or obligations of either the Charterer or the Owner existing at the time of delivery of the Vessel under this Charter and arising out of any prior Charter or out of any requisition of the Vessel other than the requisition pursuant to which this Charter is tendered, but with respect to any rights or obligations arising after delivery of the Vessel under this Charter, the terms of this Charter shall govern. The execution and delivery of this Charter shall be without prejudice to any rights which the Charterer may have to requisition the Vessel for title at any time or to requisition the Vessel for use upon termination of this Charter by the Owner. Whenever the Owner hereunder is entitled to just compensation as provided under Option II Clause B or Option I Clause C; or Clause 11 A, Part II, the rights of such Owner as to the determination and payment of just compensation under the laws and Constitution of the United States shall not be prejudiced by reason of the execution and delivery of this Charter by such Owner, and the rights of such Owner to just [fol. 215] compensation shall be the same as though he had not executed and delivered this Charter, provided, however, that all terms and conditions of this Charter other than those relating to the determination and payment of just compensation shall not be impaired or affected by the reservation contained in this sentence.

CLAUSE J. SPECIAL PROVISIONS: 1. The First paragraph of Option II of Clause C, Part I is hereby deleted and the following paragraph is inserted in lieu thereof:

Option II—For the period ending noon EWT, April 20, 1945, the agreed valuation of the Vessel for the purposes of this Charter and the insurance provided by the Charterer, is the sum of \$2,642,706.03. For the twelve (12) month period ending noon EWT, April 20, 1946, the valuation, unless otherwise agreed, shall be reduced by 2.11% of the construction cost. For each subsequent twelve (12) month period the valuation, unless otherwise agreed, shall

be reduced by 5% of the construction cost, but any Owner who shall be dissatisfied with such reductions shall have the option, to be exercised on or before April 1, 1945 or on or before April 1st, of any year thereafter, to elect Option I for the period commencing at Noon EWT, of the following April 20th, and effective for the balance of the term of this Charter. In event of such election, the provisions of Option I shall control for all purposes from such effective date.

2. The value and charter hire payable under the terms of this Charter are, as required by General Order 37, based in part upon the construction cost of the Vessel. Such construction cost has not, as of the date of the execution of this Charter, been audited by the United States Maritime [fol. 216] Commission and, therefore, it is agreed that the value and charter hire herein provided and any payments made hereunder are subject to adjustment to conform with the rate and value payable hereunder as finally determined after audit of the construction cost of the Vessel by the United States Maritime Commission.

IN WITNESS WHEREOF, the Owner has executed this Charter in quadruplicate the 19 day of December, 1944, and has elected Hire Option one and Valuation Option two, and the Charterer has executed this Charter in quadruplicate the day of Jan. 1, 45.

WATERMAN STEAMSHIP CORPORATION

Original signed by:

By: W. B. GARNER
W. B. GARNER, Executive Vice-President
UNITED STATES OF AMERICA

By: E. S. LAND, ADMINISTRATOR
WAR SHIPPING ADMINISTRATION

Original signed by:

By: ROSS LANGDON
For the Administrator

As to execution for OWNER

ATTEST:

Original signed by:

J. A. TOWNSEND

or if not incorporated

J. A. TOWNSEND, SECRETARY

[fol. 217] In the presence of:

witness

and

witness

Approved as to form:

Original signed by:

R. F. DONAGHUE

For FRANK J. ZITO

Assistant General Counsel

I, J. A. Townsend, certify that I am the duly chosen, qualified, and acting Secretary of Waterman Steamship Corporation a corporation organized and existing under the laws of the State of Alabama and having its principal place of business at Mobile, Alabama, a party to this Charter, and, as such, I am the custodian of its official records and the minute books of its governing body; that W. B. Garner, who signed this Charter on behalf of said corporation, was then the duly qualified Executive Vice-President of said corporation; that said officer affixed his manual signature to said Charter in his official capacity as said officer for and on behalf of said corporation by authority and direction of its governing body duly made and taken;

that said Charter is within the scope of the corporate and lawful powers of this corporation.

Original signed by:

J. A. TOWNSEND

Secretary

J. A. Townsend

(CORPORATE SEAL)

[fol. 218]

DEFENDANT'S EXHIBIT 1

2-28-61 R. G.

20040

UNITED STATES OF AMERICA

Department of Commerce

MARITIME ADMINISTRATION

Washington, February 21, 1961

I HEREBY CERTIFY that the annexed photostats are true copies of memorandum dated May 18, 1949, from Chief, Division of accounts to chief, Division of Claims, Subject: Waterman Steamship Corporation—Application No. 2109-D for Adjustment for Prior Sales to Citizens under Section 9 of the Merchant Ship Sales Act of 1946, and attachments thereto, as they appear on file in the Maritime Administration, U.S. Department of Commerce.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Maritime Administration to be affixed, on the day and year first above written.

THOMAS LISI

Secretary

Maritime Administration

162

[fol. 219]

Office Memorandum UNITED STATES GOVERNMENT

DATE: May 18, 1949

TO: Chief, Division of Claims

FROM: Chief, Division of Accounts

SUBJECT: Waterman Steamship Corporation—Application No. 21009-D for Adjustment for Prior Sales to Citizens under Section 9 of the Merchant Ship Sales Act of 1946.

Reference is made to your memorandum of April 18, 1949, in which you requested price and payment data on sixteen vessels purchased by the Waterman Steamship Corporation.

Attached is a statement embodying requested information on these vessels.

C. T. CRAWFORD

For T. H. REAVIS
Chief, Division of Accounts

Attachments

Received May 24, 1949,

Bureau of Finance

166

[fol. 223]

DEFENDANT'S EXHIBIT 2

2-28-61 R.G.

20040

UNITED STATES OF AMERICA

Department of Commerce

MARITIME ADMINISTRATION

Washington, February 24, 1961

I HEREBY CERTIFY that the annexed photostat is a true copy of memorandum dated August 8, 1945, from Chief Examiner to United States Maritime Commission, Subject: WATERMAN STEAMSHIP CORPORATION—Application Under Section 509 for Aid in the Construction of Three New Vessels—on file in the Maritime Administration, U.S. Department of Commerce.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Maritime Administration to be affixed, on the day and year first above written.

! ! ! ! !

Assistant Secretary
Maritime Administration

(SEAL)

[fol. 224]

Office Memorandum UNITED STATES GOVERNMENT

UNITED STATES MARITIME COMMISSION

DATE: August 18, 1945

TO: United States Maritime Commission

FROM: Chief Examiner

SUBJECT: WATERMAN STEAMSHIP CORPORATION—Application Under Section 509 for Aid in the Construction of Three New Vessels

THE APPLICATION

The subject application is for aid under Section 509, Merchant Marine Act, 1936, in the construction of the last three of the Modified C2 type vessels now being built for the Commission by Gulf shipbuilding Corporation, a wholly-owned subsidiary of the Applicant. The vessels have been named KYSKA (Hull MC 1612), MAIDEN CREEK (Hull MC 1613) and FAIRPORT (Hull MC 1614) and are now scheduled for delivery between October 26 and December 14, 1945.

Applicant will pay the whole cost of the vessels, estimated at \$2,600,000 each, exclusive of the cost of national defense features, with a down-payment of 12½% and notes for the balance secured by preferred mortgages on the vessels and payable in 20 equal annual instalments.

With respect to the employment of the vessels, Applicant states that the particular service in which they may be [fol. 225] operated cannot be determined at this time on account of the war, but since the design of the vessels is the result of studies by its Operating, Traffic and Stevedoring Departments, it is believed that they will prove to be economical and efficient units in any deep sea service.

* * * *

RECOMMENDATION

It is recommended that the following action be taken on the application of Waterman Steamship Corporation under Section 509, Merchant Marine Act, 1936, as amended, for aid in the construction of the three vessels now under construction by Gulf Shipbuilding Corporation, named KYSKA, MAIDEN CREEK and FAIRPORT, designated as Hulls MC 1612, 1613 and 1614, respectively, for operation in the foreign or domestic trade:

I. Make the following findings and determinations:

- (a) That Waterman Steamship Corporation possesses the ability, experience, financial resources and other qualifications necessary to enable it to operate and maintain said vessels in the foreign or domestic commerce of the United States; and
- (b) That the granting of the aid applied for is calculated to carry out effectively the purposes and policy of the Merchant Marine Act, 1936, as amended.

II. Approve said application and authorize the sale of the vessels to Waterman Steamship Corporation under the provisions of Section 509 of the Act upon the following terms and conditions:

- [fol. 226] (a) Each vessel shall be sold at its full cost to the Commission less the cost of national defense features;
- (b) Applicant shall pay in cash on account of the purchase price of each vessel $12\frac{1}{2}\%$ of such price;
- (c) For the balance of the purchase price of each vessel Applicant shall give its promissory notes secured by a preferred mortgage on the vessel, payable in 20 equal annual instalments, with interest at the rate of $3\frac{1}{2}\%$ per annum, payable semi-annually; and

- (d) Applicant shall be given the benefit of future legislation that may be enacted permitting the adjustment of the purchase price of vessels sold by the Government prior to the date of the enactment thereof to the extent that such legislation may permit such adjustment as to said Hulls MC 1612, 1613 and 1614.

- III. Direct the General Counsel to have prepared and executed all agreements and other papers that he deems necessary or appropriate to carry out the above authorizations on behalf of the Commission.

JOHN J. MILLER

John J. Miller
Chief Examiner

Approved by the Commission

Date 8-14-45

? ? ? ? ?

Secretary

No legal objection

? ? ? ? ?

General Counsel

Attachments

[fol. 247]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION, Plaintiff,

v.

UNITED STATES OF AMERICA, Defendant.

OPINION WITH FINDINGS OF FACT AND
CONCLUSIONS OF LAW—April 2, 1962

This action arises under the provisions of Sections 1346 (a) (1) and 1402, of Title 28, of the United States Code.

Plaintiff is seeking recovery for alleged overpayment of federal income taxes for the years 1947 through 1950, in an amount of \$2,811,773.29. There are five major issues raised by the plaintiff's four claims, and one major issue raised by the Government's counter-claim. Each of these issues will be discussed separately in this opinion.

This opinion does not attempt to set forth the final sum to which the parties are entitled in the various issues. Such sums are to be determined by the parties in accordance with regular accounting procedures, reflecting the views herein expressed.

[fol. 271]

V.

SECTION 9 DEPRECIATION

This issue raises the question as to what are the proper bases for purposes of computing depreciation during the years 1947 through 1950, under Section 113 of the Internal Revenue Code, on eighteen vessels purchased by the plaintiff prior to 1946, the purchase price of which was subsequently adjusted under the Merchant Ship Sales Act of 1946.

At various times during the years 1942 through 1946, plaintiff purchased eighteen C-2 cargo vessels from the United States Maritime Commission (hereinafter referred to as Maritime), pursuant to Section 509 of the Merchant Marine Act 1936, 49 Stat. 2000, 46 U.S.C., 1952 Ed., Sec. 1159. The total purchase price of the vessels was stipulated [fol. 272] to be \$49,582,767.02. Of this amount \$6,449,107.02 was paid in cash, \$2,609,600.00 was paid through a trade-in allowance on four vessels, and the remaining sum of \$40,524,060.00 was secured by mortgages on the vessels. From the dates the vessels were purchased through March 7, 1946, plaintiff made cash payments totaling \$9,786,339.19 in reduction of the mortgage indebtedness, leaving a balance due on the mortgage as of March 8, 1946, of \$30,737,720.81.

As of March 7, 1946, the bases of the eighteen vessels as claimed by the plaintiff and approved by the Internal Revenue Service totaled \$47,149,043.42. These bases were agreed upon as a result of adjustments in the total purchase price to account for unrecognized gain on the four vessels traded in.

On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946, 60 Stat. 41, 50 U.S.C. Appendix 1952 Ed., Secs. 1735-1746, (hereinafter referred to as the Act). Under Section 4, citizens of the United States were given the right to purchase from Maritime war-built vessels at the statutory sales price defined in Section (3) (d). Section 9 of the Act authorizes adjustments in purchase prices upon application to Maritime, of certain vessels sold by Maritime to citizens of the United States prior to March 8, 1946. The purpose of this section was to allow a fair adjustment in the cost of ships purchased during the inflationary war period with the cost of ships purchased under the Act. This adjustment of purchase price was to be accomplished according to the entire formula set forth in Section 9.

Plaintiff filed an application with Maritime for an adjustment in the purchase price of each of the eighteen vessels under Section 9 of the Act, and said application was approved.

[fol. 273] On June 11, 1951, plaintiff and Maritime entered into a final agreement for a final adjustment in the price of the eighteen vessels, pursuant to Section 9 of the Act. As a result of these adjustments plaintiff's mortgage indebtedness was reduced as of March 8, 1946, by \$20,468,904.07 from \$30,737,720.81 to \$10,268,816.74. The final agreement called for plaintiff to make a cash payment of \$86,037.70 as of March 8, 1946, in further reduction of the mortgage indebtedness. This cash payment was exclusive of and in addition to any benefit to plaintiff under Section 9. Adding this sum to the Section 9 adjustments leaves a total of \$10,182,779.04 as the amount to which the original indebtedness was reduced as of March 8, 1946.

Plaintiff contends that pursuant to the provisions of Section 9 of the Act, the price of the eighteen vessels was adjusted and reduced by \$20,468,904.07, and that the cost, and therefore the basis of these vessels as of March 8, 1946 was \$26,680,139.35, and that such sum should be used for depreciation purposes. This latter figure represents the difference between the bases agreed upon by plaintiff and the Internal Revenue Service as of March 7, 1946, *supra*, and the reduction in purchase price effected as of March 8, 1946, by the agreement with Maritime on June 11, 1951.

Defendant contends that pursuant to the provisions of Section 9 of the Act, the price of the eighteen vessels was adjusted and reduced to \$17,997,981.84, *their statutory sales price* and the price plaintiff would have had to pay for the vessels if they had been sold by Maritime to plaintiff on March 8, 1946, and not before that date.

The more than eight and a half million dollar difference between the bases as proposed by plaintiff and as proposed [fol. 274] by the defendant Government, equals the net charter hire credits to Maritime under Section 9(b)(6), as computed under defendant's contended interpretation of Section 9(b)(6). The defendant argues that this amount is not really a part of the cost of the vessels, and should therefore be deducted from the computed sum. This same argument was raised in *Barber Oil Corp. v. Manning*, 135 F. Supp. 451, and there decided in the taxpayer's favor.

The defendant sets forth several different methods of adjusting the figures to arrive at its alleged basis. But per-

meaning this issue is a single inquiry: For purposes of computing depreciation under Section 113 of the Internal Revenue Code, are the proper bases the statutory sales prices, as defined in Section 3(d), or the actual economic investment and cost after making the adjustment pursuant to Section 9(b)?

It seems to me that the Internal Revenue Service is attempting to create confusion in an area where Congress has been most explicit in setting forth the statutory procedure. The courts have spoken on this precise question in at least four cases, each one of which held adverse to the same contention now raised by the Government. *Barber Oil Corp.*, supra; *Socony Mobil Oil Company v. United States, Texaco, Inc. v. United States*, and *Mississippi Shipping Company, Inc. v. United States*, 287 F. 2d 910 (rehearing denied, 289 F. 2d, 326).

Section 9 of the Act is not a tax statute and it does not purport to provide the tax bases of vessels whose purchase prices have been adjusted thereunder. The tax bases of the eighteen vessels must be determined under the Internal Revenue Code. Sections 23 (n) and 114 (a) thereof provide for the allowance of depreciation computed on the basis of [fol. 275] the property as determined under Section 113. Section 113 (a) sets forth the general rule applicable to the present case as follows: "The basis of property shall be the cost of such property . . ."

Defendant insists that it was the intention of Congress that the price effected by the adjustment be equal to the statutory sales price. This contention was well considered in *Socony Mobil Oil Co. v. United States*, supra, and there the Court of Claims, speaking through Judge Madden, made this comment:

"Neither the express terms of the statute, those terms in their context, nor the relevant legislative history indicate a legislative intent that the basis for depreciation of the ships should be an artificial, legally constructed figure different from their actual mathematically computed cost." (At 914)

It seems improbable that if Congress had intended the Section 9 adjustments to equal the statutory sales price,

it would have omitted a reference in Section 9 to Section 3(d), which defines the statutory sales price. Indeed, the legislative history as discussed in *Socony Mobil Oil* indicates that this idea was considered by the drafters of the statute but dropped from the law as it now stands. The omission from the bill, as enacted, of a proposed Section 9(e)(1), which would have established the statutory sales price as the basis for tax purposes, clearly negates defendant's arguments.

I agree with plaintiff that the cost basis in the instant case can best be determined by comparing the economic [fol. 276] cost of the vessels to the plaintiff the moment before and the moment after the Act became effective. The parties have stipulated that plaintiff's economic investment in the vessels as of March 7, 1946, was \$47,149,043.42. The parties also stipulated that as a result of section 9 adjustments the original mortgage indebtedness was reduced \$20,468,904.07. This latter sum, plus a cash payment of \$86,037.70 as of March 8, 1946, left an outstanding mortgage indebtedness of \$10,182,779.04 on March 8, 1946.

The court finds the plaintiff's economic investment in these vessels, and consequently its cost basis of the vessels as of March 8, 1946, to be \$26,680,139.35, computed as follows:

Outstanding Mortgage Indebtedness	\$10,182,779.04
Cash Payment on March 8, 1946	86,037.70
Adjusted Bases of Vessels Traded In	175,876.40
Total Cash Paid up to March 7, 1946	16,235,446.21
<hr/>	
Total economic cost to plaintiff	\$26,680,139.35

On September 28, 1948, plaintiff sold one of the vessels ("WARRIOR") which was purchased prior to 1946, and the basis of which, for depreciation, is involved in issue here. The court finds that the sum of \$26,680,139.35 is to be used by plaintiff in computing its depreciation deduction for 1947 and that part of 1948 prior to the sale of the Warrior, and that the sum of \$25,902,565.91 is to be used by plaintiff in computing its depreciation deduction for

that portion of tax year 1948 after the sale of the Warrior and for tax years 1949 and 1950.

[fol. 277]

VI.

GOVERNMENT'S COUNTERCLAIM

The counterclaim of the Government alleges that certain adjustments in the purchase price of the eighteen vessels, discussed in Issue V, were improperly made.

To better understood the nature of this issue it is necessary to describe the manner in which the construction and sale of these vessels was to be accomplished. Under authority given to it in Sections 501, 502 and 509 of the Merchant Marine Act of 1936 (46 U.S.C. 1151, 1152 and 1159) the Maritime Commission, acting for the Government, would enter into a contract with a ship-builder to construct a vessel or vessels. Pursuant to the contract, the Government would make progress payments periodically during the construction process, which payments were applied toward the cost of the vessel to the Government. Concurrent with entering into such contract, the Government was authorized to enter into a contract for the sale of the vessels to approved applicants, plaintiff being one of such.

Section 502 (c), (46 U.S.C. 1152 (c)) required the applicant (plaintiff), as part of the contract of purchase, to make certain cash payments at the time progress payments were made and to pay interest at the rate of $3\frac{1}{2}\%$ per annum on that portion of the construction progress payments paid by the Government to the ship builder which were chargeable to the applicant and which were not reimbursed to the Government at the time of payment. If the Government was immediately reimbursed by the plaintiff for progress payments paid, no interest would accrue. The ultimate price paid for the vessel by the applicant is therefore partially dependent on when such progress payments were paid. Thus it is seen that the Merchant Marine Act of 1936 has to do with *the construction and sale of vessels*.

The Merchant Ship Sales Act, 1946, provides for certain *adjustments to be made in the purchase price of vessels*

purchased from the Government before 1946. Section 9 (b)(1) states in part that "the Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel . . ."

The first question to be decided is whether the phrase "original purchase price" as used in Section 9(b)(1) includes the statutory interest on progress payments paid by plaintiff to the Government.

The Government argues that the interest by its nature was the price paid the Government for the use of the money which it advanced to the shipbuilder to cover that portion of the progress payments on the vessels which were payable by plaintiff but loaned to plaintiff by the Government, and consequently not part of "original purchase price". With this I do not agree.

It is without question that up to the time of this lawsuit both of these parties considered the interest on progress payments to be a part of the original purchase price of the vessels. Each of the purchase contracts provides for and defines the purchase price of the vessels in a separate article which article includes such interest as part of its definition. In addition, the contracts contain a provision that the determination by the Commission of the purchase price shall be final and conclusive on the parties. The vessel mortgages given by plaintiff recite as consideration for the sale of the vessel a sum which includes interest on progress payments. [fol. 279] Correspondence between Government agencies referred to the purchase price as stated in the mortgage. The final agreement (discussed in the Section 9 depreciation issue *supra*) entered into between maritime and plaintiff states that the total purchase price of the vessels was \$49,582,767.02, which sum includes total interest on progress payments of \$705,321.54. Moreover, it appears that the Internal Revenue Service considered the interest on progress payments to be part of the purchase price of the vessels for tax purposes prior to the adjustments here in question. Finally, the evidence shows that of the 264 vessels sold prior to March 8, 1946, which were eligible for adjustment under Section 9, Maritime treated interest on progress payments as part of the original purchase price on all such vessels.

It is the contention of the defendant, in Paragraph 54(a) of its Counterclaim, that in determining the amount of the adjustment in the purchase price of the eighteen vessels under Section 9 of the Act, Maritime erroneously determined the amount of the cash payments made upon the original purchase prices of the vessels for the purpose of computing the credit to the plaintiff pursuant to Section 9(b)(1). Defendant insists that the determination by Maritime of the cash payments made upon original purchase prices was in violation of the statutory pricing formula, and therefore without authority of law. When the United States enters into a contract with a private firm or individual, the rights and duties of the parties are governed by the law applicable to contracts between private firms and individuals. The Government, however, contends that this is not the case here, as the matter comes under the exception to the above rule, namely, that the United States is not bound by the provisions of a contract entered into by an officer or agency of the Government where such officer or [fol. 280] agency enters into the contract pursuant to a specific statute, and the provisions of such contract violate such statute.

Section 9 of the Act does not define the term "cash payments paid upon the original purchase price of the vessel". Section 9 simply provides that the amount of such "cash payments paid upon the original purchase price of the vessel" be used in computing certain credits in the statutory price adjustment formula. Plaintiff purchase the vessels from the Government under Section 509 of the Merchant Marine Act of 1936 (46 U.S.C. 1159) and pursuant to purchasing contracts between the plaintiff and the Government. The purchasing contracts provide that the purchase price of each vessel includes interest on progress payments. They further provide that the determination by the Commission of the purchase price shall be final and conclusive on the parties. Section 9 of the 1946 Act does not provide for the sale or purchase of vessels, but simply for an adjustment in the purchase price of certain vessels purchased prior to the date of the Act. Consequently, the final agreement pursuant to Section 9 is not a contract of sale or purchase. It simply establishes, by the application of a prescribed

formula, the amount of the adjustment to be made in the original purchase price of the vessels. The original purchase price was agreed to and established by the original purchase contracts. The final agreement supersedes the purchase contract only to the extent that the original purchase prices of the vessels are adjusted in the final agreement. The final agreement is simply a fulfillment of the existing contractual relations under the purchase contracts.

There is no contention made by the Government that the purchase contracts were in violation of Section 509 of the Merchant Marine Act of 1936, pursuant to which they were [fol. 281] made. The purchase contracts and the final agreement having violated neither act, this litigation is taken out of the exception and the contract is made binding upon both parties. It seems to me that the matter comes squarely under the case of *Lynch v. United States*, 292 U.S. 571, in which Mr. Justice Brandeis states:

"The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment. *United States v. Central Pacific R. Co.*, 118 U.S. 235, 238, 6 S. Ct. 1038, 30 L.Ed. 173; *United States v. Northern Pacific Ry. Co.*, 256 U.S. 51, 64, 67, 41 S. Ct. 439, 65 L.Ed. 825. When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals . . . Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of the public as well as private debtors . . ." (At 579-580)

Defendant says that regardless of the answer to the preceding question (meaning of "original purchase price"), Maritime was unauthorized by the 1946 Act to credit plaintiff with interest on interest paid on the progress payments. Section 9(b)(5) requires only that in computing the amount to be credited, the date of delivery is to be taken as the time

when interest begins to accrue. That section does not prohibit interest credits on payments made prior to delivery. Since such payments were on a part of the original purchase price, the credits were properly included in the computations.

[fol. 282]. The next contention made by the Government in its counterclaim is that the application of the excess credits due plaintiff under Section 9(b)(8) of the Act against the mortgage indebtedness of plaintiff to Government, rather than a payment in cash to plaintiff in such amount, and the retroactive application of such credit in reduction of plaintiff's mortgage indebtedness from June 11, 1951, the date of the final agreement, to March 8, 1946, the effective date of the Act, deprived the Government of the interest due it on the amount of such reduction in mortgage indebtedness during such period, which was contrary to and not intended by the Act. This raises two questions: Did the Act require a cash payment for such excess credits or did it allow a reduction in any mortgage indebtedness in the amount of such credits? If the latter, was the retroactive application of such credits to a reduction of plaintiff's mortgage indebtedness to Government contrary to the Act?

Section 9(b)(8), (50 U.S.C. Sec. 1742(b)(8), 1952 Ed.), provides in part:

"If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant . . . Upon such payment by the Commission . . . , such overpayment shall be treated as having been refunded"

I find nothing in this section which requires a cash payment and this was the administrative interpretation of the agency charged with administration of the Act. (Hearings Before the Sub-Committee of the Committee on Appropriations, House of Representatives, 80th Congress, 1st Session, on the Independent Offices Appropriation Bill for [fol. 283] 1948, Part 2, printed in 1947 by the United States Government Printing Office for the use of the Committee

on Appropriations, page 775, et seq.). However, the entire matter was put at rest by the provisions of the Independent Offices Appropriation Act, 1948, 61 Stat. 585. Not only is there no valid reason which would preclude the parties to the final agreement from electing to treat the credit in the manner chosen, that is, reducing the mortgage indebtedness, but this 1948 Act prevented applicants who otherwise owed the Government from getting a cash rebate as a result of Section 9(b)(8). *National Bulk Carriers v. Warren*, 82 F. Supp. 511.

Of greater significance is the fact that the credit was applied retroactively from the date of the final agreement (June 11, 1951) to the date of the Act (March 8, 1946). The Court of Claims has spoken on this precise question in *New York and Cuba Mail Steamship Co. v. United States*, 172 F. Supp. 684, in the following language:

"The date of the Act was March 8, 1946. As we have seen, the plaintiff filed its application for adjustment in May 1946. The adjustment was not finally computed and embodied in the adjustment contract until January 5, 1950. The plaintiff and the Commission, in their computations and in the agreed adjustment, credited the plaintiff with the amounts to which it was entitled to credit, as of March 8, 1946. That meant, of course, that those sums were credited as partial payments on the plaintiff's mortgages as of that date, and that interest accrued to the Government thereafter only on the thereby reduced balances of the mortgages. The Government says that the balances of principal should not have been reduced until the 1950 date when the adjustment was finally agreed to. The Government's [fol. 284] argument would distinguish, because of differences in the text, between different items in the list of adjustments, so far as their effective dates are concerned. This opinion is already too long, and the intricacies of this argument will not be discussed. The purpose of the statute seems to us quite plain. If the plaintiff had bought these used ships for the first time in 1946, the Government would have received in 1946, in cash, or in a mortgage, only the sales price of the

used ships. Since the plaintiff had in 1943 paid, or given mortgages for the higher prices of the then new ships, and since such purchasers were, under Section 9, to be treated like 1946 purchasers, we think Congress did not intend that such purchasers should go on, for several years after 1946, paying interest on the larger amounts which they had promised to pay in 1943." (At 688)

I agree with this interpretation of the Act, and hold that it was entirely proper in the instant case to retroactively apply the credits.

The final question in this issue is whether the plaintiff was granted a double credit on a portion of certain trade-in allowances which were applied in payment of interest on construction progress payments. The interest of $3\frac{1}{2}\%$ charged by the Government on the progress payments made by it to the ship builders was, as this Court has determined in disposing of the first issue raised by the Government's counterclaim, properly included as a part of the original purchase price of the vessel under the vessel purchase contracts. Payments by the plaintiff of such interest, whether made in cash or by trade-in allowances, represent payments by the plaintiff on the original purchase price of the vessels, and for all such payments plaintiff was entitled to [fol. 285] full credit in computing the adjustments under Section 9 of the Ship Sales Act. It is immaterial whether such payments were made in cash or by trade-in allowance.

Dated at Mobile, Alabama, this 2nd day of April 1962.

Daniel H. Thomas, United States District Judge.

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION, Plaintiff,
v.
UNITED STATES OF AMERICA, Defendant.

ORDER FOR JUDGMENT—May 23, 1962

Pursuant to the opinion issued on April 2, 1962, it is hereby ordered that judgment be entered in favor of plaintiff on its claims for the years 1947 through 1950 for tax [fol. 286] and interest in the total amount of \$2,241,388.30 with interest thereon according to law.

Done at Mobile, Alabama, this 23rd day of May, 1962.

Daniel H. Thomas, District Judge, U.S. District Court, Sou. Dist. Ala.

Filed and Entered This the 23 Day of May, 1962, Minute Entry No. 10,433.

William J. O'Connor, Clerk, By John V. O'Brien,
Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NOTICE OF APPEAL—Filed July 20, 1962

Notice is hereby given that the defendant, the United States, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this action on May 23, 1962, and from each and every aspect of the Judgment.

Vernol R. Jansen, Jr., United States Attorney.

[File endorsement omitted]

Certificate of Service (omitted in printing).

[fol. 296]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 20040

UNITED STATES OF AMERICA, Appellant,
versus
WATERMAN STEAMSHIP CORPORATION, Appellee.

Appeal from the United States District Court for the Southern District of Alabama.

OPINION—March 30, 1964

Before Rives, Cameron and Hays,* Circuit Judges.

Rives, Circuit Judge: This suit for refund of income taxes for the years 1947 through 1950 was tried by the district court without a jury. Pursuant to a carefully con-

* Of the Second Circuit, sitting by designation.

sidered opinion reported as *Waterman Steamship Corporation v. United States*, 203 F.Supp. 915, the court entered judgment for the taxpayer Waterman in the total amount [fol. 297] of \$2,241,388.30, together with interest. On appeal there is no complaint as to the rulings on the three issues which the district court captioned: "I. WATERMAN BUILDING" (203 F.Supp. 917-921), "II. BABY FLAT-TOPS" (Id. 921-925), and "IV. ALABAMA STATE TAX" (Id. 926-928). The remaining questions are: (1) whether Waterman is entitled to a foreign tax credit under section 131 of the Internal Revenue Code of 1939 for certain taxes paid to the Republic of the Philippines;¹ (2) whether the district court correctly determined Waterman's cost basis for depreciation of eighteen vessels whose sales prices were adjusted pursuant to the Merchant Ship Sales Act of 1946;² (3) whether the district court correctly held that interest paid by Waterman on Government-advanced progress payments was properly included in "the original purchase price" of eighteen vessels for purposes of the price adjustment authorized by section 9 of the Merchant Ship Sales Act of 1946.

[fol. 303]

2. Cost Basis of Vessels for Depreciation.

For the purpose of the depreciation issue the facts were also stipulated, and are fairly stated by the district court in 203 F.Supp. at 928. The difference between the amounts contended for as the proper cost basis of the vessels for depreciation is \$8,818,838.55.

The district court decided this issue in favor of the plaintiff taxpayer in line with earlier decisions in *Barber Oil Corporation v. Manning*, D.C. N.J. 1955, 135 F.Supp. 451, 458-461, and *Socony Mobil Oil Co. v. United States, Texaco, Inc. v. United States, Mississippi Shipping Co. v. United States*, Ct. Cl. 1961, 287 F.2d 910. Later the District

¹ 14 Philippine Annotated Laws, Title 72.

² Chapter 82, 60 Stat. 41 (50 U.S.C.A. Appendix, 1952 ed., sec. 1735).

Court for the District of Delaware, in an extensive opinion, declined to agree with any of the earlier decisions and decided the issue in favor of the United States. *National Bulk Carriers, Inc. v. United States*, D.C. Dela. 1963, 214 F.Supp. 585.⁶

After careful study, we are constrained to agree with the District of Delaware, and set forth briefly the reasons [fol. 304] which lead us to that decision. The language of the statute and its legislative history show that Congress intended pre-enactment purchases to be treated as if the sale had occurred on the date of enactment, that is, on a parity with post-enactment purchases. That is explicitly stated in the opening paragraph of section 9(b):

“(b) Such adjustment shall be made as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:”

Of the subparagraphs which follow, some provide for a decrease in the cash down payment and mortgage indebtedness [sections 9(b)(1), (2), (3) and (4)] which would adjust the purchase price to conform to the statutory sales price provided by section 3(d)(4). Other subparagraphs provide for adjustments which compensate the purchaser for his investment [section 9(b)(5)], restore charter hire paid or that should have been paid [section 9(b)(6)], and return taxes and tax benefits due to pre-enactment ownership [sections 9(b)(8) and 9(c)(1)]. Those items, which are not capital in nature, do not enter into the computation of cost for purposes of depreciation.

The legislative history of section 9 is set forth at some length in the opinion of the Delaware District Court in 214 F.Supp. at pp. 591-593 and leads to the same conclusion. [fol. 305] It was clearly the intention of Congress to put pre-enactment purchasers and post-enactment purchasers on the same basis, that of the statutory sales price.

⁶ Attached as Appendix A to that opinion at 214 F.Supp. 597-599 is the full text of the pertinent Section 9 of the Merchant Ship Sales Act of 1946.

3. Interest on Progress Payments.

This issue raised by the Government's counterclaim is whether the district court erred in including interest paid by Waterman on Government-advanced progress payments in the calculation of the "original purchase price" of the eighteen vessels. Several other questions originally raised by counterclaim were either withdrawn in the district court or decided against the Government (see 203 F.Supp. 932-934), and are not urged on appeal. We agree with the district court's disposition of this issue (see 203 F.Supp. 930-932). In *New York & Cuba Mail Steamship Co. v. United States*, 1959, 172 F.Supp. 684, 688, the Court of Claims said:

"The Maritime Commission in all such situations treated the interest accrued during the construction period as a part of the capital cost of the ship. We think that, as a matter of sound accounting practice, and of logic, that treatment was right."

Reaching the same result, the Delaware District Court in *National Bulk Carriers, Inc. v. United States*, *supra*, noted that great weight should be given to the interpretation of the Act by the Maritime Commission charged with [fol. 306] its administration and enforcement, and further:

"By interpreting 'original purchase price' to be the total cost to the buyer—contract price plus interest—the basic intent of Congress is furthered. Neither the post-war nor pre-Act buyer has any competitive advantage. They both pay the same price for the ship, the statutory sales price." (214 F.Supp. at 596.)

The full treatment accorded this issue by the district court in this case, and by the Delaware District Court in the *National Bulk Carriers'* case, makes further discussion unnecessary.

The judgment of the district court is reversed and the cause remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

CAMERON, CIRCUIT JUDGE, CONCURRING IN PART AND, IN
PART, DISSENTING:

The decision of the majority of the items designated "*1. Foreign Tax Credit Issue*" and "*3. Interest on Progress Payments*" accords with my own views, and in the decision on these issues I concur. The holding of the majority on the issue designated "*2. Cost Basis of Vessels for Depreciation*" goes so far afield of my own view that I am constrained to state my views in a brief dissent.

[fol. 307] - Admittedly, there is no clear statutory authority for the decision of the majority that Appellee's basis for depreciation of the vessels which form the subject of this litigation must be reduced by the \$8,818,839.55 in dispute, which amount represents reductions in the *additional* amount of the cost of said vessels to be paid under the purchase contracts as originally executed. The majority appears to adopt the conclusion of the District Court of Delaware in *National Bulk Carriers, Inc. v. United States*, D.C. Dela. 1963, 214 F. Supp. 585. That court, basing its holding solely upon its reading of the legislative history of Section 9 of the Merchant Ship Sales Act of 1946, 50 U.S.C., Appendix, 1952 ed., Sec. 1735 states as its conclusion:

"A decision for the taxpayer would be contrary to the equitable principles that motivated the Congress to act. A larger depreciation basis for wartime buyers for the same class of ships would give them a substantial competitive advantage over similar (sic) situated post war buyers. With the language and the background of the legislation in mind, the government must prevail." 214 F. Supp. at page 593.

The legislative history of this statute does not, in my opinion, support this conclusion. Indeed, the Chief Judge of the District Court himself recognized the uncertain area into which his opinion ventured when, in the paragraph preceding that above quoted, he said:

"It is for the Supreme Court or Congress to conclusively determine this problem." Ibid. at page 593.

[fol. 308] I find no such uncertainty or obscurity in the congressional intent on the point in issue. The basis of property for the purpose of computing depreciation is determined by statute, § 113 (a), Internal Revenue Code of 1939, 26 U.S.C.:

"The basis of property shall be the cost of such property; except that—"

There follow in subsections (1) through (23) enumerated exceptions to the quoted rule, none of which even remotely touches upon this problem.

"These and the other provisions upon which they depend create exceptions to a general rule and should not be extended by implication or otherwise to situations not expressly provided for." (Referring to predecessors to §§ 113 (a) (1) et seq.) *Central National Bank*, 29 BTA 530.

When Congress intended that its acts authorizing the redetermination of the price of ships purchased under our various subsidized ship procurement programs would also determine the basis of property in a manner differing from § 113 (a), *supra*, or would determine other factors affecting income tax liability of purchasers, it has always said so specifically.¹

¹ For example, § 510 of the Merchant Marine Act of 1936 (46 U.S.C. 1160 (e)):

"No gain shall be recognized to the owner for the purpose of Federal income taxes in the case of a transfer of an obsolete vessel to the Federal Maritime Board or Secretary of Commerce under the provisions of this section. The basis for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws of a new vessel acquired as contemplated in this section shall be the same as the basis of the obsolete vessel or vessels exchanged for credit upon the acquisition of such new vessel, increased in the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels) and decreased in the amount of loss recognized upon such transfer."

And § 510 of that Act (46 U.S.C. 1161):

"The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of

[fol. 309] § (b) (8) of the Merchant Ship Sales Act of 1946, *supra* (the statute construed by the majority opinion to support its conclusion), specifies how the income tax effect of its re-framing of the purchase price shall be treated:

"There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c) (1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the [fol. 310] applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid."

It seems, therefore, abundantly clear that Congress has uniformly spelled out any exception to the rule of § 113 (a), *supra*, which it intended to apply.

On the point here in issue, the House of Representatives did consider a bill which would have provided specifically

any new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g) of this section, in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (c) of this section."

such an exception, and the result Appellant seeks (see H.R. 3603, 79th Congress, 1st Session), which was not passed. The Senate likewise considered, and indeed enacted a bill including as § 9 (e) (1), thereof a provision which also would have produced this result. It provided:

"If an adjustment in the purchase price of a vessel is made under this Section, the income and excess profits taxes of the vessel owner under the Internal Revenue Code for the taxable year within which the delivery of the vessel was made to the purchaser and for *subsequent taxable years*, shall be redetermined. For such purposes of redetermination the *vessel shall be considered as having been acquired at the adjusted* [fol. 311] purchase price, and the income and deductions attributable to such vessel shall be determined as if this Section had been in effect on the date of such delivery." [Emphasis added.] See consideration of H.R. 3603, 79th Congress, 1st Session in the Senate, December 4, 1945 (Legislative day October 29, 1945).

However, in conference, this provision was eliminated, and the statute we are here considering was approved. (See House Conference Report No. 1526, 79th Congress, 2nd Session, to accompany H.R. 3603, dated February 6, 1946) and subsequently enacted by both Houses as the Merchant Sales Act of 1946, *supra*.

Moreover, when the executive branch, acting by and through the Commissioner of Internal Revenue of the Treasury Department, undertook to write in by administrative action that which Congress had refused to enact, in Mimeograph 6366, 1949-1 C.B. 270, the 81st Congress, in H.R. 3419, passed by both Houses but vetoed by President Truman (see 96 Cong. Rep. P.p 15, 79102), enacted a bill which provided the precise treatment here sought by Appellee.

I do not agree with the District Court of Delaware (in 214 F.Supp. page 593) that "... these statements are entitled to little or no weight" because of the holding of *Fogarty v. United States*, 340 U.S. 8. Here we have no effort of a much later Congress to supplant the views of its pre-

decessor; but, to the contrary, the second Congress following, expressing itself through the *same* committees, [fol. 312] supporting and implementing the act of the earlier Congress. It is difficult to conceive of a clearer exposition of legislative intent than the sum of the foregoing actions.

The Congress manifestly intends that § 113 (a), *supra*, shall be applied to determine the basis of these vessels; that the basis is "the cost of such property."

The word "cost" used in this context has a clear meaning:

"The amount in value paid, charged, or engaged to be paid for anything bought or taken in barter." Webster's new Twentieth Century Dictionary, Standard Reference Works, 1956 Edition.

It is undisputed in this record that Appellee had paid in cash \$16,235,446.21, on account of the purchase price of the subject vessels, prior to the redetermination of its price (R. 75, 83); that the Adjusted Basis of vessels traded in thereon was \$175,876.40 (R. 75, 83); that Appellee paid the additional sum of \$86,037.70 upon settlement of the adjusted price (R. 84), and that the mortgage debt to be paid thereon, after crediting thereto all adjustments, including the \$8,818,838.55 here in controversy, was \$10,182,779.04 (R. 79). The total paid or to be paid for these vessels is therefore \$26,680,139.35. This is the "cost" and this is the basis under § 113 (a), *supra*.

When the foregoing is considered together with the comprehensively documented opinion of the Court of Claims in [fol. 313] *Socony Mobil Oil Co., Inc. et al. v. United States*, 287 F.2d 910, the decision of the District Court of New Jersey in *Barber Oil Corporation v. Manning*, 135 F. Supp. 451, and Judge Thomas' carefully considered opinion in this action below, a decision for Appellee appears absolutely compelled.

Therefore, believing that to hold otherwise represents a clear departure from the legislature's plainly express intention, I respectfully dissent from the majority's holding as to point 2, "Cost Basis of Vessels for Depreciation."

[fol. 314]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20040

D. C. Docket No.

UNITED STATES OF AMERICA, Appellant,

versus

WATERMAN STEAMSHIP CORPORATION, Appellee.

Appeal from the United States District Court for the
Southern District of Alabama.

Before Rives, Cameron and Hays*, Circuit Judges.

JUDGMENT—March 30, 1964

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court for further proceedings consistent with the opinion of this Court.

"Cameron, Circuit Judge, Concurs in Part and Dissents in Part."

Issued as Mandate: May 13, 1964.

* Of the Second Circuit, sitting by designation.

[fol. 315] [File endorsement omitted]

[fol. 316]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20,040

[Title omitted]

PETITION FOR REHEARING EN BANC BY WATERMAN STEAMSHIP CORPORATION, APPELLEE—filed April 20, 1964

To the Honorable Judges of the United States Court of Appeals for the Fifth Circuit:

Waterman Steamship Corporation, Appellee herein, presents this, its petition for a rehearing *en banc*, as provided in 28 U.S.C.A., § 46(c) and Rule 25a of this Court, on the appeal herein and of this Court's opinion and decree rendered in the above numbered and entitled cause on March 30, 1964, reversing and remanding that portion of the decree of the United States District Court for the Southern District of Alabama (Thomas, Judge), which had held that the cost basis of the eighteen (18) vessels, whose prices had been adjusted under the Merchants Ship Sales Act of 1946, was as contended by Appellee and decreed judgment in favor of Appellee for a refund of income taxes paid by it on the cost basis of said vessels for depreciation purposes, [fol. 317] and in support thereof, respectfully shows:

I.

The majority of the Court erred in its reliance on the opinion of the Federal District Court for the District of Delaware (Wright, Chief Judge) in *National Bulk Carriers Inc. v. United States*, 214 F. Supp. 585 (D.C. Del., 1963) in determining issue 2, Cost Basis of Vessels for Depreciation. As noted in the majority opinion of the Court (p. 8), the same issue has been before three different Federal District Courts and the Court of Claims in

six different cases (the three cases before the Court of Claims were consolidated for trial before that Court). *Barber Oil Corporation v. Manning*, 135 F. Supp. 451, 458-67 (D.C. N.J., 1955, Modarelli, Judge); *Socony Mobil Oil Co. v. United States*, *Texaco, Inc. v. United States*, 287 F. 2d 910, 911-914 (Ct. Cls., 1961, opinion by Madden, Judge, with Reed, Justice, Jones, Chief Judge, and Durfee and Laramore, Judges, concurring), rehearing denied, 289 F. 2d 326 (1961); *Waterman Steamship Corporation v. United States*, 203 F. Supp. 915 (1962); *National Bulk Carriers, Inc. v. United States*, *supra*. Of the three Federal District Judges and of the five Judges of the Court of Claims (one a retired Justice of the United States Supreme Court sitting by designation), who previously had considered the same issue, only one Judge, the Chief Judge for the District Court for the District of Delaware, had held in favor of the position contended by the Government. This Court is the first Court of Appeals to have this issue presented, and it has decided in favor of the Government in a two-one decision. Thus, of the eleven Judges who have thus far considered this issue, eight have favored the position of the [fol. 318] Taxpayers and only three have favored the position of the Government. The latter three consist of the Federal District Judge for the District of Delaware and the two Judges of this Court (one of whom is from the Second Circuit, sitting by designation) who base their decision on the Delaware District Court's opinion.

It is noteworthy that the Delaware District Court relied entirely on the legislative intent and purpose of the Merchants Ship Sales Act and, particularly, § 9 thereof, which is admittedly not a tax statute and does not purport as such to provide the tax basis of vessels whose purchase prices have been adjusted thereunder, and completely ignored the actual economic cost of the vessels to the Taxpayer, which is determined under Section 113 of the Internal Revenue Code of 1939. In fact, in fn. 38 (p. 593) to its opinion, that Court pointed out that the Court in the *Waterman* case had "reasoned that the 'economic cost' must be the taxpayer's basis under the code" and, as a preface to

that footnote, stated that the case was decided "on different grounds from the ones set out in" that Court's opinion. Thus, that opinion clearly ignored the normal tests and general rules applicable in determining the basis of property for depreciation purposes. This fallacy is clearly pointed out in the opinion of Circuit Judge Cameron (since deceased), in which he dissents from the majority opinion on that particular issue (beginning at p. 13). In this connection, it is also important to note that the Delaware District Court's opinion (p. 592) refers to the House and Senate reports (see fn. 26 and 27, p. 592), which were made before the amendment of Section 9 to its final form and to the subsequent conference report (see fn. 28, p. 592), which makes no mention of the amendment. It does not, except in a footnote (fn. 39, p. 593), recognize that the original bill in the House and in the Senate, supported the Govern-[fol. 319] ment's position, but that the amendment of Section 9 of the House Bill, which was ultimately approved in conference and adopted by both houses, completely changed the theory and effect of Section 9. The Delaware District Court is also completely and strangely silent on the fact and the effect of the deletion of Section 9(e)(1) from the original Senate Bill. This too, is pointed out in Circuit Judge Cameron's dissenting opinion, at pp. 15 and 16.

II.

A majority of the Court erred in its division of the subparagraphs of Section 9(b) of the Act into (1) those making an adjustment in the statutory sales price and (2) those making certain other adjustments to equalize pre-enactment and post-enactment purchases of vessels, and particularly in its reference to the fact that certain of the items of adjustment were not capital in nature and, therefore, did not enter into the computation of costs for purposes of depreciation (p. 9). As pointed out earlier, the Delaware District Court did not at all consider the economic cost of the vessels to the taxpayer in that case. Compare this with *Barber Oil Corp. v. Manning, supra*, in which that Court agreed with the taxpayer's "contention that its 'costs' was the amount it 'paid'" (p. 460), and with

Socony Mobil Oil Co. v. United States, Texaco, Inc. v. United States, Mississippi Shipping Co. v. United States, supra, in which the Court of Claims stated that "the Government's asserted 'cost' is not the economic, dollars-and-cents cost, but an artificial figure, legally deemed, for this tax purpose, to be the cost though it is not in fact the cost." (p. 913), and with the District Court's opinion in the *Waterman* case, in which it stated that "the cost basis in the instant case can best be determined by comparing [fol. 320] the economic cost of the vessels to the plaintiff the moment before and the moment after the Act became effective." (p. 930). As pointed out by Circuit Judge Cameron in his dissenting opinion (p. 17), the amounts actually paid by the Appellee are undisputed in the record, and that "this is the 'cost' and this is the basis under Section 113 (a)." The fact that certain adjustments were measured by items that ordinarily are not considered capital items, does not mean that the cost figure resulting from the inclusion of such adjustment so measured is not capital in nature. As pointed out in *Barber Oil*, the "credit to the Commission merely was one of the statutory adjustments and as such it did not transform plaintiff's earlier * * * and subsequent payments * * * or a portion thereof into 'refunds' or not-out-of-pocket payments." (p. 460).

III.

The petition for rehearing *en banc* should be granted for an additional reason. The issue on which Appellee is requesting a rehearing was determined in favor of Appellant by the vote of two Judges, only one of which is a permanent Judge of this Court, with another Judge, who was, until his recent death, a permanent Judge of this Circuit, dissenting from the majority holding on this issue. Therefore, on this important issue, the permanent Judges of this Circuit, who have passed on this issue, are evenly divided. Also see the analysis in I hereinabove as to the other courts and other judges who have considered and passed on this issue.

Also, this issue is of tremendous import throughout the shipping industry. Two hundred and sixty-four ves-

sels were sold before March 8, 1964, which were eligible for price adjustment under Section 9 (R. 76). The total adjustments in the purchase prices of these vessels under [fol. 321] Section 9 were \$68,000,000.00 (91 Cong. Rec., Pt. 7, p. 9282 et seq.), of which a substantial portion would involve differences in the statutory sales prices and the economic costs to the owner for depreciation purposes. Therefore, there is a substantial amount of tax money involved from both the taxpayer and the Government's position. The point in question arises in each taxable year in which depreciation on any such vessel is claimed by the taxpayer. Thus, in the case at hand, only four of Appellee's tax years (1947 through 1950) are at issue. However, the question will be at issue in the remaining 16 years of the life, for depreciation purposes, of these vessels. Thus, the issue could be raised, and may face this Court, in future refund cases and appeals therefrom. Also, in this connection, the taxpayer in *Mississippi Shipping Co., Inc. v. United States*, *supra*, (now Delta Steamship Lines, Inc.) is a resident of a state located in the Fifth Circuit. This same issue was decided in that taxpayer's refund case before the Court of Claims opposite to the decision of this Court. Should that taxpayer, in future years, claim depreciation as allowed it by the Court of Claims and this be disputed by the Commissioner under the authority of this decision, such taxpayer might file a claim for refund in the District Court located in the Fifth Circuit rather than in the Court of Claims and would thereby be faced with the conflicting decision of this Circuit.

Although such conflicts may properly be within the jurisdiction of the United States Supreme Court to ultimately decide and determine, as intimated in the Delaware District Court's decision, as well as in the dissenting opinion of Circuit Judge Cameron (p. 12), it would be the better practice for the entire Court of this Circuit to hear and determine this issue and, perhaps, thereby eliminate any conflict of opinion and decision between it and the Court [fol. 322] of Claims, than to require the Appellee to petition for writ of certiorari on the basis of such conflicts, when the only two permanent Judges of this Circuit who have participated in this issue differ on this issue.

Wherefore, Appellee and Petitioner prays ~~that~~ as to issue No. 2, the Cost Basis of Vessels for Depreciation, a rehearing *en banc* be granted herein and that on such rehearing, the opinion and decree of this Court of March 30, 1964, be recalled, and that the decree below of the United States District Court for the Southern District of Alabama, wherein judgment was rendered for Appellee, be affirmed and that this appeal be dismissed.

Respectfully submitted,

/s/ WILLIAM H. ARMBRECHT

/s/ JOHN W. McCONNELL, JR.

Of Counsel: Armbricht, Jackson, McConnell & DeMouy,
1101 Merchants Bank Building, Mobile, Alabama.

[fol. 323]

CERTIFICATE OF COUNSEL

I, John W. McConnell, Jr., one of the attorneys of record for Appellee and Petitioner, do hereby certify that the foregoing Petition is presented in good faith and not for delay and that a copy thereof has been served on counsel of record for the Government by mail, as required by law, on this 18th day of April, 1964.

/s/ JOHN M. McCONNELL, JR.

[fol. 324]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 20040

UNITED STATES OF AMERICA, Appellant,
versus
WATERMAN STEAMSHIP CORPORATION, Appellee.

Appeal from the United States District Court for the
Southern District of Alabama.

ORDER DENYING PETITION FOR REHEARING—May 4, 1964

Before Rives and Hays*, Circuit Judges.**

Per Curiam:

The appellee's petition for rehearing is

DENIED.

[fol. 325] Clerk's Certificate to Foregoing Transcript
(omitted in printing).

* Of the Second Circuit, sitting by designation.

** Judge Cameron participated in the decision of this case on original hearing, concurring in part and dissenting in part, but died before the petition for rehearing was filed.

[fol. 326]

IN THE SUPREME COURT OF THE UNITED STATES

No. 245, OCTOBER TERM, 1964

WATERMAN STEAMSHIP CORPORATION, Petitioner,

v.

UNITED STATES.

ORDER ALLOWING CERTIORARI—December 7, 1964.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.